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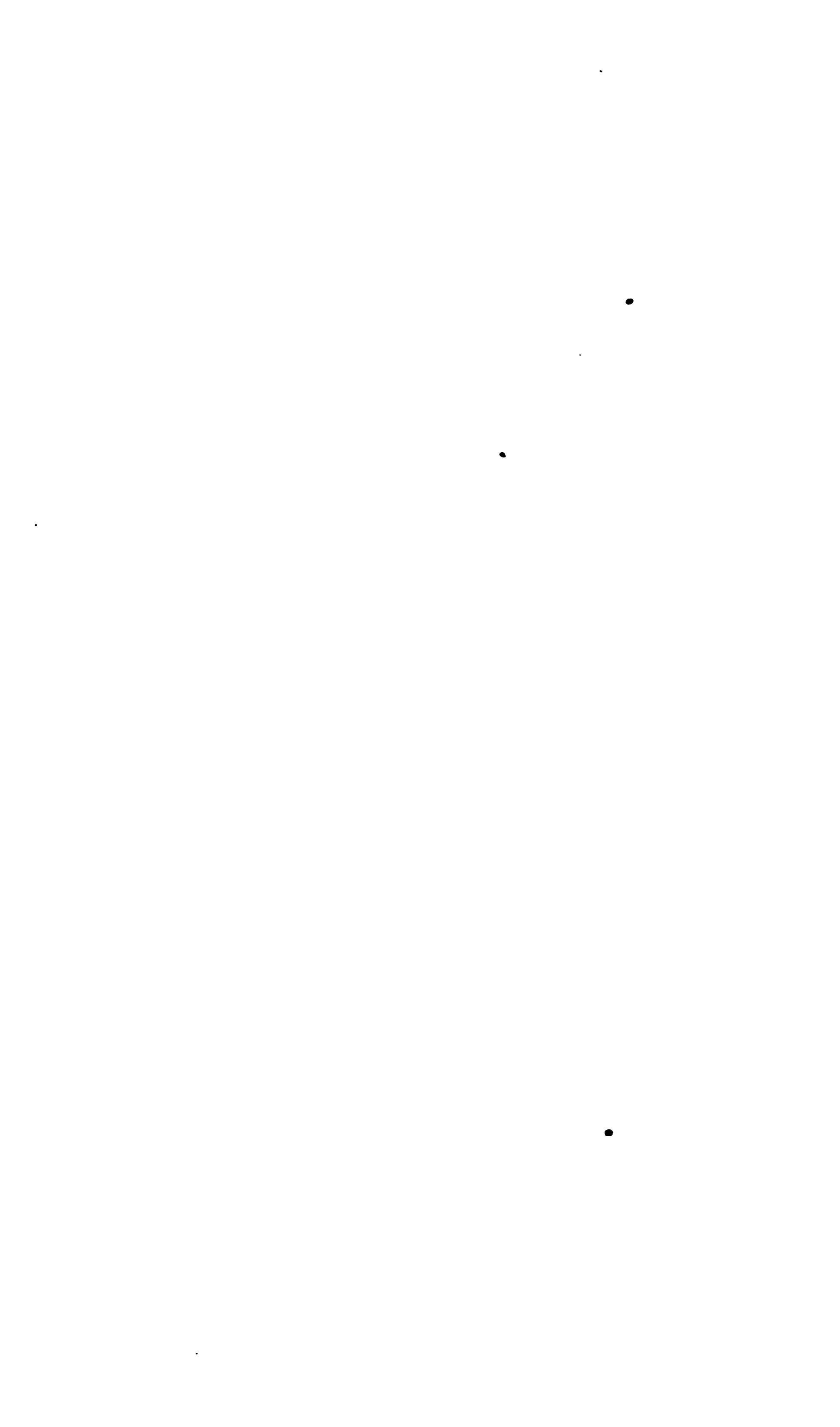
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I N D E X

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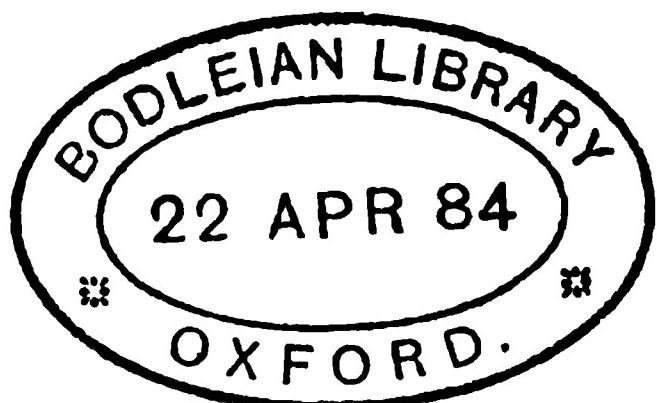
OF THE

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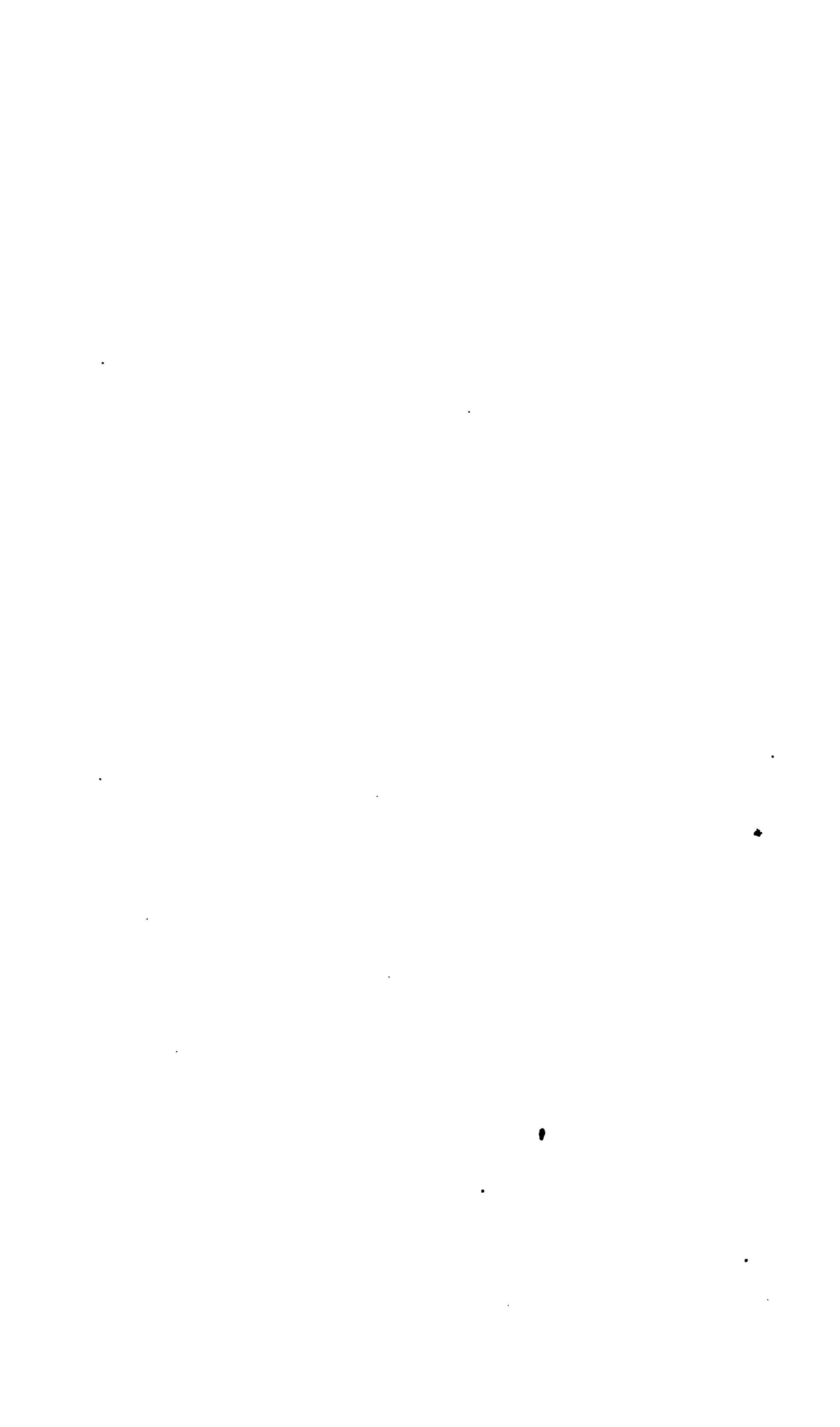
FOR THE

SECOND SESSION OF THE FORTY-SEVENTH CONGRESS.

1882-'83.



WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1883.



INDEX TO HOUSE MISCELLANEOUS DOCUMENTS.

CONTENTS OF THE VOLUMES.

| | |
|---|---|
| VOL 1.. Nos. 1 to 18 inclusive, except Nos. 6 and 9. | VOL 10.. No. 37. |
| VOL 2.. No. 6, part 1. | VOL 11.. Nos. 39 and 40. |
| VOL 3.. No. 6, part 2. | VOL 12.. No. 41. |
| VOL 4.. Nos. 19 to 38 inclusive, except Nos. 26, 27, 28, 30, 31, 32, 33, 34, 35, and 37. | VOL 13.. No. 42. Reports of the Tenth Census. |
| VOL 5.. No. 26. | VOL 14.. No. 43. |
| VOL 6.. No. 27. | VOL 15.. No. 44. |
| VOL 7.. No. 28. | VOL 16.. No. 45, part 1. |
| VOL 8.. Nos. 30, 31, 32, 33, and 34. | VOL 17.. No. 45, part 2. |
| VOL 9.. No. 35. | VOL 18.. No. 45, part 3. |
| | VOL 19.. No. 45, part 4. |

INDEX TO THE DOCUMENTS.

| Subject. | Vol. | No. | Part. |
|--|-------|-----|-------|
| A. | | | |
| Alabama, testimony in the contested-election case of John W. Jones vs. Charles M. Shelley, from the fourth district of the State of..... | 4 | 21 | |
| Ames, J. G., communication from, <i>et al.</i> , relative to publication and distribution of public documents..... | 1 | 12 | |
| Appropriations, new offices., &c., list of, made during the second session of the Forty-seventh Congress..... | 4 | 36 | |
| Appropriations, letter from the Commissioners of the District of Columbia, transmitting estimates of. (See H. Ex. Doc., Vol. 17.) | ..... | 9 | |
| B. | | | |
| Baird, Spencer F., Secretary of the Smithsonian Institution, communication from, <i>et al.</i> , relative to publication and distribution of public documents..... | 1 | 12 | |
| Bullion certificates, remarks of Hon. H. C. Burchard, Director of the United States Mint, in relation to | 4 | 22 | |
| Burchard, Hon. H. C., Director of the United States Mint, remarks of, in relation to bullion certificates..... | 4 | 22 | |
| C. | | | |
| Census, reports of the Tenth..... | 13 | 42* | |
| Centennial, letter from the Secretary of the Smithsonian Institution relative to the exhibit of the United States executive departments at the | 4 | 20 | |
| Claims, Court of: | | | |
| Statement of judgments rendered by the, for year ending December 3, 1881..... | 1 | 5 | |
| Statement of judgments rendered by the, for year ending December 3, 1882..... | 4 | 25 | |

* And parts.

| Subject. | Vol. | No. | Part. |
|---|------|-----|-------|
| Clerk of the House of Representatives, report of expenditures by the, from December 5, 1881, to June 30, 1882 | 1 | 11 | |
| Commercial Relations, reports from the Consuls of the United States on the commerce, manufacture, &c., of their consular districts | 11 | 39 | |
| Commissioners of the General Land-Office, letter from the, relating to railroads not completed within the time fixed by law | 1 | 17 | |
| Commissioners of the District of Columbia, letter from the, transmitting estimates of appropriations. (See Ex. Doc., Vol. 17.) | | 9 | |
| Committees, list of standing and select..... | 1 | 2 | |
| Congress, list of reports made to..... | 1 | 4 | |
| Consular reports..... | 4 | 19 | |
| Consuls of the United States, reports from the, on the commerce, manufactures, &c., of their consular districts | 11 | 39 | |
| Contested elections: | | | |
| Digest of cases of, with index | 9 | 35 | |
| Testimony in the case of John W. Jones vs. Charles M. Shelley, from the fourth district of the State of Alabama..... | 4 | 20 | |
| Court of Claims: | | | |
| Statement of judgments rendered by the, for year ending December 3, 1881..... | 1 | 5 | |
| Statement of judgments rendered by the, for year ending December 3, 1882..... | 4 | 25 | |
| D. | | | |
| Decisions, rendered by the First Comptroller of the Treasury. | 10 | 37 | |
| District of Columbia, letter from the Commissioners of the, transmitting estimates of appropriations for the. (See Ex. Doc., Vol. 17.)..... | | 9 | |
| Documents: | | | |
| Letter from the Doorkeeper of the House of Representatives, transmitting a list of, in the folding-room of the House..... | 1 | 7 | |
| Letter from J. G. Ames, Spencer F. Baird, and A. R. Spofford, relative to the publication and distribution of | 1 | 12 | |
| Doorkeeper of the House of Representatives: | | | |
| Letter from the, transmitting a list of documents in the folding-room of the House..... | 1 | 7 | |
| Inventory of public property in charge of the..... | 1 | 7 | |
| E. | | | |
| Elections: | | | |
| Testimony in contested case of John W. Jones vs. Charles M. Shelley, from the fourth district of Alabama..... | 4 | 21 | |
| Digest of cases of contested, with index of same | 9 | 25 | |
| Entomological Commission, third report of the..... | 15 | 44 | |
| Eulogies: | | | |
| Upon the life and services of Hon. William M. Lowe, deceased | 8 | 30 | |
| Upon the life and services of Hon. J. T. Updegraff, deceased | 8 | 31 | |
| Upon the life and services of Hon. Godlove S. Orth, deceased | 8 | 32 | |
| Upon the life and services of Hon. R. M. A. Hawk, deceased | 8 | 33 | |
| Upon the life and services of Hon. John W. Shackelford, deceased..... | 8 | 34 | |
| Expenditures, letter from the Clerk of the House of Representatives, transmitting a report of the, of the House from December 5, 1881, to June 30, 1882 | 1 | 11 | |

INDEX TO MISCELLANEOUS DOCUMENTS.

V

Subject.

Vol.

No.

Part.

F.

First Comptroller of the Treasury:

| | | |
|---|----|----|
| Letter from the, transmitting a report of the expenses of the illness and death of James A. Garfield, late President of the United States | 1 | 14 |
| Decisions rendered by the, with appendix (Vol. III, 1882) | 10 | 37 |
| Fish Commission, bulletin of the United States (Vol. II, 1882) | 11 | 40 |
| Folding-room of the House of Representatives, list of documents in the | 1 | 7 |

G.

| | | |
|---|----------|-----------|
| Garfield, James A., letter from the First Comptroller of the Treasury, transmitting a report of the expenses of the illness and death of, late President of the United States..... | 1 | 14 |
| General Land Office, letter from the Commissioner of the, relating to railroads not completed within the time fixed by law..... | 1 | 17 |
| Geological Survey: | | |
| Bulletin of the, of the United States..... | 1 | 16 |
| Monographs of the, of the United States, Vol. VI..... | 14 | 43 |

H.

| | | |
|---|----------|-----------|
| Hawk, Hon. R. M. A., eulogies upon the life and services of, late a member of the House of Representatives from the fifth district of the State of Illinois..... | 8 | 33 |
| House of Representatives: | | |
| Letter from the Clerk of the, transmitting a report of the expenditures of the, from December 5, 1881, to June 30, 1882..... | 1 | 11 |
| List of members of the, arranged by States..... | 1 | 1 |
| List of members of the, arranged alphabetically, showing the committees of which they are members..... | 1 | 3 |
| List of standing and select committees of the..... | 1 | 2 |

I.

| | | |
|---|----------|-----------|
| Illinois, eulogies upon the life and services of Hon. R. M. A. Hawk, late a member of the House of Representatives from the fifth district of the State of..... | 8 | 33 |
| Indiana, eulogies upon the life and services of Hon. Godlove S. Orth, late a member of the House of Representatives from the ninth district of the State of..... | 8 | 32 |
| Indians, memorial of the Creek Nation of, relating to the allotment of lands in severalty..... | 1 | 18 |
| Interior Department: | | |
| Bulletin of the United States geological survey, from the..... | 1 | 16 |
| Letter from J. G. Ames, superintendent of documents of the, et al., relative to the publication and distribution of public documents..... | 1 | 12 |
| Reports of the Tenth Census..... | 13 | 42 |

J.

Judgments:

| | | |
|--|---|----|
| List of, rendered by the Court of Claims for the year ending December 3, 1881..... | 1 | 5 |
| List of, rendered by the Court of Claims for the year ending December 3, 1882..... | 4 | 25 |

L.

| | | |
|---|-----------|-----------|
| Lands, public, existing laws of the United States, of a general and permanent character, and relating to the survey and disposition of the. (H. R. Ex. Doc. 47, Forty-sixth Congress, third session) | 16 | 45 |
|---|-----------|-----------|

1

| Subject. | Vol. | No. | Part. |
|--|------|-----|-------|
| Laws, the existing, of the United States, of a general and permanent character, and relating to the survey and disposition of the public domain. (H. R. Ex. Doc. 47, part 1, Forty-sixth Congress, third session)..... | 16 | 45 | 1 |
| Librarian of Congress, letter from A. R. Spofford, the, <i>et al.</i> , relative to the publication and distribution of documents..... | 1 | 12 | |
| List of appropriations for new offices, &c..... | 4 | 36 | |
| List of members of the House of Representatives, arranged by States..... | 1 | 1 | |
| List of members of the House of Representatives, arranged alphabetically, showing the committees of which they are members..... | 1 | 3 | |
| List of reports made to Congress..... | 1 | 4 | |
| List of standing and select committees of the House of Representatives..... | 1 | 2 | |
| Lowe, Hon. William M., eulogies upon the life and services of, late a member of the House of Representatives from the eighth district of Alabama..... | 8 | 30 | |
| M. | | | |
| Memorial of the Creek Nation of Indians, relating to the allotment of lands in severalty..... | 1 | 18 | |
| Memorial of the Tice Manufacturing Company | 1 | 8 | |
| Military Academy, report of the Board of Visitors to the, for year 1882 | 4 | 24 | |
| Military district, the Virginia, in Ohio, papers designed to illustrate the necessity for the passage of bill H. R. 7015, relating to the | 1 | 10 | |
| Mint, remarks of Hon. N. C. Burchard, Director of the United States, relative to bullion certificates | 4 | 22 | |
| Monographs, of the United States Geographical Survey (Vol. VI)..... | 14 | 43 | |
| N. | | | |
| National Soldiers' Home, letter from the Board of Managers of the, transmitting the annual report of the operations of the, for the fiscal year ending June 30, 1882..... | 1 | 13 | |
| New offices, appropriations, &c., list of, made during the second session of the Forty-seventh Congress | 4 | 36 | |
| North Carolina, eulogies upon the life and services of Hon. John W. Shackelford, late a member of the House of Representatives from the third district of the State of..... | 8 | 34 | |
| O. | | | |
| Offices, new, appropriations, &c., list of, made during the second session of the Forty-seventh Congress..... | 4 | 36 | |
| Ohio, Virginia military district in: | | | |
| Papers designed to show the necessity for the passage of bill H. R. 7015, relating to the..... | 1 | 10 | |
| Eulogies upon the life and services of Hon. J. T. Updegraff, late a member of the House of Representatives from the sixteenth district of the State of..... | 8 | 31 | |
| Order, questions of, raised and decided in Committee of the Whole House on general appropriation and revenue bills.. | 4 | 38 | |
| Orth, Hon. Godlove S., eulogies upon the life and services of, late a member of the House of Representatives from the ninth district of the State of Indiana | 8 | 32 | |
| P. | | | |
| Population, statistics of the, of the United States at the Tenth Census | 13 | 42 | |

INDEX TO MISCELLANEOUS DOCUMENTS.

| Subject. | No. | Pa | |
|---|------|----|-------|
| Public property, letter from the Doorkeeper of the House of Representatives transmitting an inventory of, in the folding-room of the House..... | 1 | 7 | |
| Questions of order, raised and decided in Committee of the Whole House on general appropriation and revenue bills.. | 4 | 38 | |
| R. | | | |
| Railroads, letter from the Commissioner of the General Land Office, transmitting a report of, not completed within the time fixed by law..... | 1 | 17 | |
| Rebellion, War of the. (Series 1, vol. 8.)..... | 6 | 27 | |
| Rebellion, War of the. (Series 1, vol. 9.)..... | 12 | 41 | |
| Reports: | | | |
| Of the Tenth Census..... | 13 | 42 | |
| Consular..... | 4 | 19 | |
| First Comptroller of the Treasury, of expenses of the illness and death of James A. Garfield, late President of the United States | 1 | 14 | |
| List of, made to Congress..... | 1 | 4 | |
| Of Tariff Commission..... | 2, 3 | 6 | 1, 2, |
| Of the Clerk of the House of Representatives, of expenditures by him from December 5, 1881, to June 30, 1882 | 1 | 11 | |
| Of the Smithsonian Institution | 5 | 26 | |
| Of Board of Visitors to the United States Military Academy for year 1882 | 4 | 24 | |
| Rivers and Harbors, letter from the Secretary of War relative to certain works on | 1 | 15 | |
| S. | | | |
| Shackelford, Hon. John W., eulogies upon the life and services of, late a member of the House of Representatives from the third district of the State of North Carolina..... | 8 | 34 | |
| Smithsonian Institution: | | | |
| Letter from Spencer F. Baird, Secretary of the, relative to the publication and distribution of public documents..... | 1 | 12 | |
| Letter from the Secretary of the, relative to the exhibit of the United States at the Centennial Exhibition..... | 4 | 20 | |
| Annual Report of the..... | 5 | 26 | |
| Soldiers' Home, letter from the board of managers of the National, transmitting the annual report of the operations of the, for fiscal year ending June 30, 1882 | 1 | 13 | |
| Spoofford, A. R., Librarian of Congress, letter from, et al., relative to the publication and distribution of public documents | 1 | 12 | |
| T. | | | |
| Tariff, relating to manufactured articles subject to duty | 4 | 29 | |
| Tariff Commission, report of the | 2, 3 | 6 | 1, 2, |
| Tice Manufacturing Company, memorial of the..... | 1 | 8 | |
| Treasury: | | | |
| Letter from the First Comptroller of the, transmitting a report of the expenses of the illness and death of James A. Garfield, late President of the United States | 1 | 14 | |
| Decisions of the First Comptroller of the, with appendix. (Vol. III, 1882.) | 10 | 37 | |
| U. | | | |
| Updegraff, Hon. J. T., eulogies upon the life and services of, late a member of the House of Representatives from the sixteenth district of the State of Ohio..... | 8 | 31 | |

| Subject. | Vol. | No. | Part. |
|---|------|-----|-------|
| V. | | | |
| Virginia military district in Ohio, papers designed to illustrate the necessity for the passage of bill H. R. 7015 relating to the..... | 1 | 10 | |
| W. | | | |
| War of the Rebellion. (Series 1, vol. 8.) | 6 | 27 | |
| War of the Rebellion. (Series 1, vol. 9.) | 12 | 41 | |
| War, Secretary of, letter from the, relative to certain works on rivers and harbors | 1 | 15 | |



DIGEST OF ELECTION CASES.

CASES

OF

CONTESTED ELECTIONS

IN THE

HOUSE OF REPRESENTATIVES,

FORTY-SEVENTH CONGRESS,

FROM

1880 TO 1882, INCLUSIVE.

COMPILED BY J. H. ELLSWORTH, CLERK TO THE COMMITTEE ON ELECTIONS,
UNDER ACT APPROVED MARCH 3, 1883.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1883.



FORTYSEVENTH CONGRESS.

COMMITTEE ON ELECTIONS.

William H. Calkins, of Indiana.

George C. Hazelton, of Wisconsin.

John T. Wait, of Connecticut.

William G. Thompson, of Iowa.

Ambrose A. Ranney, of Massachusetts.

James M. Ritchie, of Ohio.

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Samuel H. Miller, of Pennsylvania.

Ferris Jacobs, jr., of New York.

John Paul, of Virginia.

Frank E. Beltzhoover, of Pennsylvania.

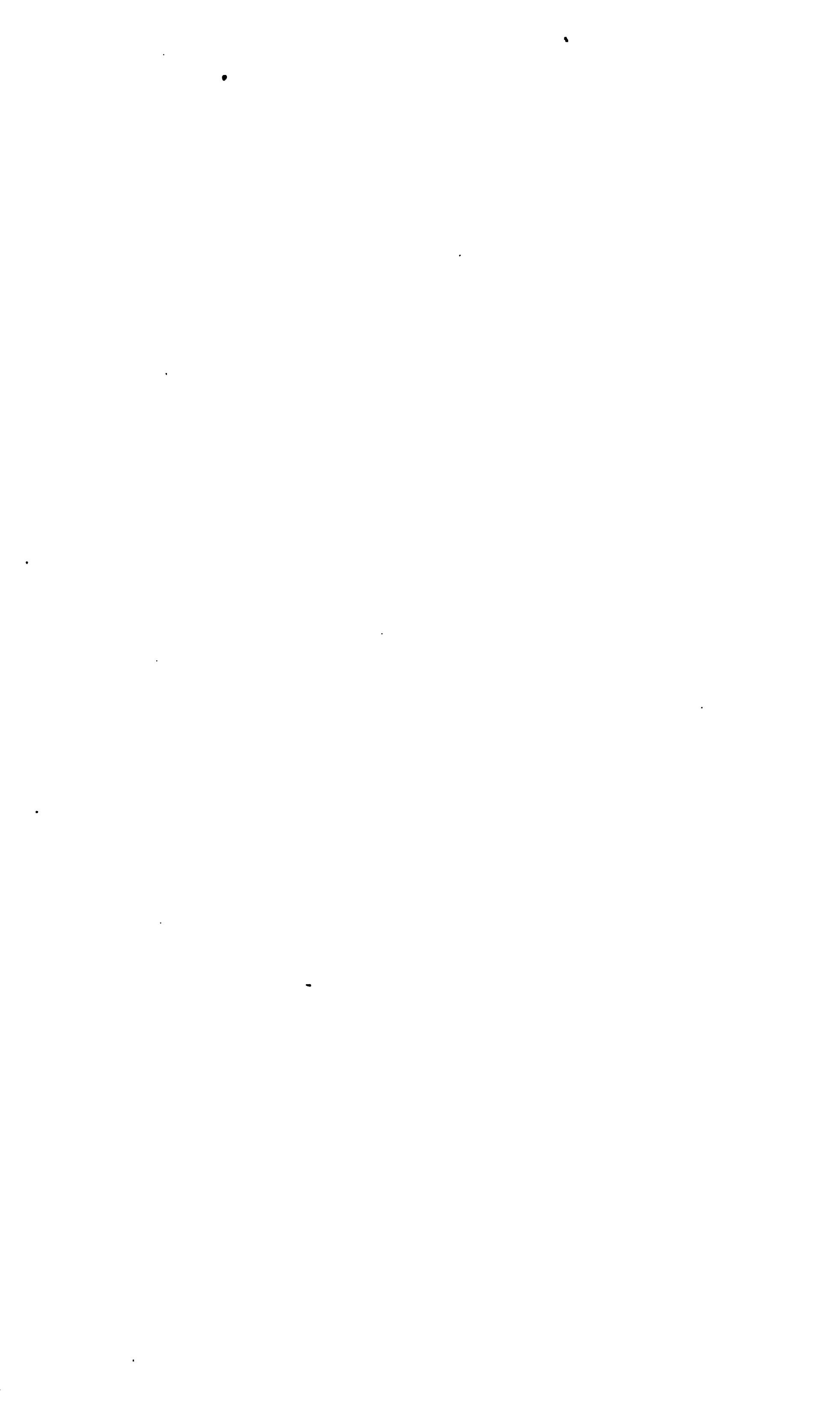
Gibson Atherton, of Ohio.

Lowndes H. Davis, of Missouri.

George W. Jones, of Texas.

Samuel W. Moulton, of Illinois.

JAMES H. ELLSWORTH, *Clerk.*



DIGEST OF ELECTION CASES.

FORTY-SEVENTH CONGRESS, FIRST AND SECOND SESSIONS.

PAUL STROBACH vs. HILARY A. HERBERT.

SECOND CONGRESSIONAL DISTRICT OF ALABAMA.

Contestant claimed among other things that the vote of a county should be thrown out because the proper officers failed to give notice of the election, and appoint managers; and that a number of votes were counted for *Herbert*, contestee, which were spelled *Hebert*.

Held, That where the statutes of a State provide that when for any cause managers and other officers of election are not appointed, the qualified electors present may elect them; and it appears that this was done and an election held at the time and place fixed by law, such vote of such county must be counted. That as to the ballots printed *Hebert*, the evidence shows that they were printed so by mistake of the printer, that no person of like name was then being voted for or was a candidate, and that the ballots were intended to be cast for *Herbert*, and must be counted for him.

The House adopted the report.

JUNE 27, 1882.—Mr. RANNEY, from the Committee on Elections, submitted the following

R E P O R T:

The Committee on Elections, to whom the above cause was submitted, beg leave to report that they have examined with care the testimony in the case and the able and elaborate arguments submitted, and they have come to the conclusion that the contestee is entitled to the seat he holds.

Your committee do not deem it necessary to enter into any detailed discussion of the case. A few statements will show sufficient grounds on which to rest the conclusion they have reached.

The contestee in his brief claims that after making allowance for, and giving full effect to, all the evidence in the case he is elected by 3,357 votes.

Contestant is represented by Abraham & Mayer and Robert G. Ingersoll.

Messrs. Abraham & Mayer claim in their brief that Mr. Strobach is elected by 938 votes. This majority is obtained by making many allowances and deductions which they contend are justified by the evidence. Your committee do not wish to be considered as approving or

disapproving the positions taken by counsel, which are not specially discussed. It is sufficient for the purposes of this case to notice two of the items in the count made by Messrs. Abraham & Mayer. They throw out the vote of Escambia County, by which contestee is made to lose a majority, as given by the returns, of 634, and they count off from Herbert 1,190 votes in Pike County, on the alleged ground that Herbert's name was spelled *Hebert* instead of *Herbert* in this number of ballots.

As to Escambia County, by the law of Alabama it is the duty of the sheriff, judge of probate, and clerk of the circuit court to give notice of an election and appoint managers. This duty the sheriff, judge of probate, and clerk of the circuit court of Escambia County failed to perform. But by the statutes of Alabama it is provided that when for any cause managers and other officers of election are not appointed, the qualified electors present may elect them. It appears that this was done and the election held; and it further appears that on the 30th day of October, 1880, the chairman of the Congressional executive committee of the Democratic party gave contestant notice that this course would be pursued, and invited him to name the persons he desired as managers to represent them at the different boxes. Under these circumstances, as the law is well settled that when time and places of holding an election are fixed by law no notice by the officials is essential, your committee can see no good ground upon which to exclude the vote of Escambia County.

This conclusion derives additional weight from the fact that contestant in his notice of contest made no charge against the legality of the election as held in Escambia County.

As to the alleged misnomer in Pike County, your committee find that the evidence does not establish that more than fifty votes were cast in which Mr. Herbert's name was spelt *Hebert*. They further find that these ballots were intended to be cast for Herbert; that they were printed *Hebert* by mistake of the printer; that no person of like name except contestee was being voted for or was a candidate, and they believe that under the law and the precedents these votes were rightfully counted for contestee. Indeed, Mr. Ingersoll, one of contestant's counsel, admits they should be so counted.

If we then restore to contestee his majority in Escambia, 634, and the votes taken from him in Pike, 1,190, he gains from these two items alone, on the count of Abraham & Mayer, 1,824.

Deducting from this sum the majority claimed by Abraham & Mayer, 938, gives Herbert a majority of 886.

Having reached this substantial majority by making these two corrections in the calculation of Messrs. Abraham & Mayer, we deem it unnecessary to examine whether the other claims to allowances and deductions made by them are well founded.

In the second brief of Mr. Ingersoll for contestant he admits that Mr. Strobach's majority is only 463.

In the estimate by which he reaches this conclusion he also deducts from Herbert his majority in Escambia County, to which the committee have decided contestee was entitled. Restoring simply the vote of this county and making no further corrections in Mr. Ingersoll's estimates, Herbert is elected by the difference between 463 and 634, say by 171 votes.

But there are other claims put forward in behalf of contestant, in Mr. Ingersoll's brief, which we think equally untenable.

He deducts 177 from Herbert at Manningham, Butler County, and 164 at Spring Hill, Butler County.

The vote at these boxes is not assailed in the pleadings or by the evidence further than by a comparison with the census returns. This comparison does not show that the vote was unduly large, but simply that Herbert received more than the white vote and Strobach less than the colored vote. Your committee cannot consent, for such reason as this, to disturb the returns of the regularly constituted authorities.

The restoration of the returns of these boxes, in addition to the vote of Escambia, would leave the majority for the contestee 512, admitting every other claim made by counsel for contestant.

We also think it equally clear that the evidence does not establish that 300, as is claimed for contestant in one count, or 275 votes, as is claimed in the other, were taken from contestant and added to contestee at box 2, C. H., Montgomery County. Denying this claim would further increase the majority of contestee by 550 votes in one count and 600 in the other.

But your committee do not in any manner mean to indorse or agree to the justice of all the other claims set up for contestee. They simply deem it unnecessary further to examine them, having reached the conclusion by the examination of a few of the items of contest that contestee is duly elected.

Contestee would seem to have been elected by a much larger majority than either of those given above, but they have adopted as the readiest mode of reaching a conclusion the plan of examining only a few of the items claimed by contestant's counsel.

This examination, resulting as is shown above, demonstrates that, conceding, for the sake of argument, everything else claimed by the able counsel for contestant, the contestee was elected by a decided majority.

Having reached this conclusion, your committee do not deem it essential that they should inquire further into the matter, as the precise majority is immaterial.

The only doubt which the committee has had in regard to this case is whether the irregularities and frauds alleged and appearing in evidence were not sufficient to render the election of contestee void.

Contestant has arrayed the schemes of fraud conceived and executed in the election held in August, 1880, and claims that the same practices were resorted to in the November election of that year. The committee have scrutinized closely the proof and evidence in this regard, and are impressed with the fact that this seems to have been so to a considerable extent. But applying the rules of law which obtain in election cases, it is not satisfactorily proved that there was any such general scheme of fraud which appears to have been successfully practiced in a sufficient number of cases as to change the general result.

The statute law of the State of Alabama has also been arraigned as wholly insufficient and inadequate to secure an honest election, and as a safeguard against fraudulent practices which seems to be so rife in that State. With this the committee have nothing to do, as a general principle. But it may be permitted to say that the charge seems to be true to a lamentable degree. The law seems to be quite severe as against the elector. But as regards the officers and managers of election, there appears to be no adequate provision to insure fidelity and honesty of action, or to punish derelictions of duty.

The committee have felt bound, however, to follow the law as it stands.

The committee unanimously recommend the adoption of the following resolution:

Resolved, That contestant be allowed to withdraw his contest without prejudice.

ALGERNON A. MABSON vs. WILLIAM C. OATES.**THIRD CONGRESSIONAL DISTRICT OF ALABAMA.**

Contestant served notice of contest on contestee on December 8, 1880, and contestee filed his answer on January 5, 1881. On February 1, 1881, contestant commenced taking testimony and took the depositions of eight witnesses, all apparently on the same day. No other witnesses appear to have been examined for contestant. On March 3, 1881, contestee took the depositions of witnesses in reply. This was all the evidence adduced, except some certificates.

In January, 1882, the clerk of the Committee on Elections served on contestant notice to file his brief. On the day designated for filing the brief, contestant's attorney appeared before the committee and applied for one week more in which to file same, which was granted; and at the expiration of that time contestant appeared and applied for further time in which to take further testimony, and filed an affidavit in support thereof. This motion was denied for reasons stated. Afterwards contestant filed a supplemental affidavit covering some of the objections pointed to the former.

Held, That the application came too late; that parties should be bound by a reasonable degree of diligence; that it would be dangerous to establish a precedent allowing parties to contests after submitting their case to ascertain the grounds upon which he had been overruled, and to then supplement his application by a new affidavit, avoiding the decision, and thus open up the case again.

The House adopted the majority report.

APRIL 7, 1882.—Mr. CALKINS, from the Committee on Elections, submitted the following

R E P O R T:

The Committee on Elections, to whom was referred the above-entitled contested-election case, have had the same under consideration, and beg leave to make the following report :

The case was referred by the full committee to a subcommittee to read the proofs and hear the arguments and make a report thereon. Mr. Atherton, from the subcommittee, made the following report to the full committee, viz :

MABSON vs. OATES.

The subcommittee on Elections, to whom was referred the matter of the contest of A. A. Mabson vs. W. C. Oates, of third district of Alabama, submit the following report :

W. C. Oates and A. A. Mabson were opposing candidates for a seat in the Forty-seventh Congress from the third Congressional district of Alabama at the November election, A. D. 1880.

By the returns of said election, as certified to the secretary of state, Mr. Oates received 10,614 votes and Mr. Mabson received 5,636 votes, leaving a majority for the former of 4,982.

On the 8th day of December, A. D. 1880, Mr. Mabson caused to be served on Mr. Oates notice of his intention to contest said election.

In said notice said contestant specified as the grounds of contest, substantially, that in certain precincts particularly named, in the counties of Lee, Barbour, Russell,

Henry, Coffee, Dale, and Geneva, in said district, the inspectors of election willfully and fraudulently made false statements as to the result of said election, returning for the contestant a much less, and for the contestee a much greater, number of votes than they respectively received; that in one precinct (named) the inspectors refused to open the polls and hold an election, and, acting in concert with evil-disposed persons, by fraudulent representations, threats of violence, and of criminal prosecutions, prevented other persons from opening the polls and carrying on an election, whereby a large number of persons who desired to vote for contestant were prevented from exercising the right; that the canvassing officers improperly rejected the returns of certain precincts by reason of alleged informalities in the returns, and that the votes so unlawfully returned and manipulated were tabulated and included in the estimate by the canvassing officers, and formed a part of the vote upon which the secretary of state found, ascertained, and certified to the election of contestee.

He also alleged that the board of officers, consisting of the judge of probate, sheriff, and clerk of the circuit court in said counties (except in three precincts), fraudulently, and for the purpose of giving the contestee an undue advantage, appointed inspectors of elections from the party to which the contestee belonged only, and refused to appoint any of the same (except as aforesaid) from the opposite party.

That but for the fraud, intimidation, and misconduct aforesaid, the majority of the contestant would have been 2,500 over the contestee.

On the 5th day of January, A. D. 1881, the contestee filed an answer to said notice denying generally the allegations thereof; and specifically denying that lawful votes given for the contestant had not been counted for him, or that votes not given for contestee had been counted for him: admitting that no election had been held in the precinct complained of, but denying that the omission had been the result of any intention to injure the contestant; admitting that the board charged with the duty of appointing inspectors were members of the same political party with contestee, but denying that they acted dishonestly, or contrary to law, and averring that they honestly and properly exercised their power of appointment, and did in fact appoint inspectors from all political parties when practicable so to do.

Contestee avers that his majority was 5,000 over contestant, and that the latter admitted he was not elected.

These were the substantial issues joined between the parties, and on the 1st day of February, 1881, or nearly four weeks after the answer was filed, contestant commenced taking testimony before the probate judge of Lee County, Alabama, and took the testimony of eight witnesses, relating to the election in certain precincts in that county. All of the witnesses appear to have been examined on the same day; at least no continuances are noted by the officer. No other witnesses appear to have been examined for contestant; and on the 3d day of March, A. D. 1881, the contestee took the evidence of certain witnesses in reply, relating to the election in the same precincts.

The only other evidence adduced in addition to the above consisted of the certificates of certain persons purporting to be supervisors of election for that district, but the record fails to disclose who offered same, or how the certificates got into the report.

But how they got in, or whether these certificates of the supervisors of election are to be received as evidence, is immaterial in the view taken of the case by the committee.

The case stood in this condition until the — day of January, A. D. 1882, when the clerk of the committee served on contestant notice to file a brief of his argument herein on the — day of —, A. D. 1882. On that day his attorney appeared before the committee on his behalf, and made an application to continue the case for one week longer, which was granted, and at the expiration of the time the contestant, with his attorney, appeared before the committee and made an application orally that time be granted the contestant to take further testimony, or that the committee would recommend to the House the appointment of a commission to proceed to the third district of Alabama, and investigate the matters alleged in the notice of contest, and accompanied said oral request with an affidavit of the contestant in support thereof, stating that he was in Washington, D. C., from the opening of the session until the holiday recess; that he was appointed a master in chancery by the circuit court of the United States, which commenced its session in Mobile, January 10, 1882, and had to be there at the time; that shortly thereafter he got sick, went to Union Springs, did not return to Mobile till January 30, 1882, and did not believe the case would be taken up by the committee until the testimony was printed; that he had used due diligence to take his testimony in the case in time, but could not for the reason that no register in bankruptcy, or judge of a United States court, resided in the district, and that he had to rely on State officials, who all belonged to the same political party with contestee, and all of them were unfriendly to him and to his contest, because they all had been elected by the same unlawful methods that had seated the contestee and defeated the contestant; that he had subpoenaed 200 witnesses before H. H. Smith, a notary public, and that they had been examined, and the deposition were withheld;

that he owed \$15 thereon and had paid \$45, and that Smith had agreed to forward them without further payment, and that contestant was ignorant of the reason why they were not forwarded,

That on June 20, 1881, he subpoenaed 250 witnesses before W. A. Baldwin, mayor of Union Springs, and that, the point being made, Baldwin refused to take the depositions, because he was a relative of contestant; that he did not take further testimony, because he thought he could procure no officer to take them that would be even as favorable to him as Baldwin; that contestant made application to the probate judge of Bullock County to take testimony, but that he refused to do so, because he was elected to office by the same unfair methods that defeated contestant. He further alleged that after his time for taking testimony had expired, and on February 28, 1881, he applied to the probate judge of Russell County to take his depositions, and that he refused because the time had expired; that the time allowed by the statutes for taking depositions was totally inadequate; that it was necessary to examine at least 1,000 witnesses to show how the electors voted.

That it would appear, by a report of the Senate Committee on Privileges and Elections of the Forty-third Congress that the elections in said State were tainted with fraud and unfairness; that the same state of things continued and existed at the election of November 2, 1880, as an investigation of said election would fully show.

The first question presented for consideration is the preliminary one of granting time to the contestant to take further testimony, or of appointing a commission to take the same.

Touching the first proposition, has the contestant shown such degree of diligence as to induce the House, under well-established precedents, to grant an extension of time; or has he been guilty of such want of diligence that his application should be denied? In the report of the contested-election case of Boles *vs.* Edwards, prepared by Mr. Hazelton, it is said:

"To say nothing of the terms of the law * * * touching the extending of the time fixed to allow *supplementary* evidence, which clearly relates to cases in which the applicant has taken some evidence, that is to say, has made some use of the time given him, the policy of the House has been adverse to granting extensions. Procrastination in these cases diminishes the object of investigation, and cheapens the value of the final decision. The law is intended to furnish ample opportunity for taking testimony. Parties should be held to a *rigid rule* of diligence under it, and no extension ought to be allowed where there is reason to believe that had the applicant brought himself within such rule there would have been no occasion for the application." (Smith's Cont. El. Cas., 18.)

In Giddings *vs.* Clark the Committee on Elections, in a report prepared by Mr. McCrary (among other things), say:

"That no such extension should ever be granted to a sitting member unless it appears that by the exercise of great diligence he has been unable to procure his testimony, and that he is able, if an extension be granted, to obtain such material evidence as will establish his right to the seat, or that by reason of the fault or misconduct of the contestant he has been unable to prepare his case." (Smith's Cont. El. Cas., 92-3.)

In the contested-election case of Vallandigham *vs.* Campbell it was held:

"That the fact that the sitting member was a member of the previous Congress, and attended to his duties as such during a part of the time when by law the testimony should be taken, furnishes no reason why further time should be granted." (1 Bartlett, p. 223.)

As to rule that great diligence is required to be proved to entitle the party to an extension of time, see the case of Howard *vs.* Cooper. (1 Bartlett, p. 275.)

Is diligence, within the rule, shown by contestant? He allowed almost a month to elapse after the answer was served before he took any depositions. He applied to an officer or two to take his deposition, who refused to act, and he neither tried to procure others, nor to have an officer of his own political party appointed by Federal authority. He went away from Washington to attend to affairs not so important as his contest, and left the same for a considerable time, without giving attention thereto. Were it necessary to put the refusal to grant an extension on that ground, the committee believe that the contestant has been guilty of such laches as to preclude him from the right to take further testimony.

But in order to entitle himself to an extension of time after taking testimony, the contestant must state what witnesses he desires to examine, give their names, their residence, and what they will swear to, or a sufficient reason why the same is not done. In the language of the able report in Giddings *vs.* Clark, 1 Bartlett, 91-94:

"The affidavits relied on are fatally defective in this, that they do not state the names of the witnesses whose testimony is wanted, nor the particular facts which can be proved by their testimony."

It is also laid down as a rule, in the same case, that an applicant "should produce the affidavit of some of the witnesses themselves * * * stating what facts are within their own knowledge." (Same, p. 93.)

But in this case the affiant makes general statements, alleges facts not within his personal knowledge, does not state the names of witnesses, their residence, or what particular facts he proposes to prove by any of them. He alleges fraud and unfairness in general terms, and does not pretend it is the same fraud alleged in his notice of contest, and the committee think that the affidavit is fatally defective, and no extension should be granted by reason of anything therein stated.

The report of the Senate Committee on Privileges and Elections in the Forty-third Congress is not evidence. It relates to a period long anterior to 1880.

It is not a judicial determination, and is not to be considered in determining the application.

In Boles *vs.* Edwards, Smith El. Cas., 58, the contestee submitted in evidence the report of a joint select committee, appointed by the senate and house of representatives of Arkansas to investigate election frauds, and it was rejected as simply "views of certain members of the legislature of Arkansas." So this report, if it related to the very election in question, would be simply the views of certain members of the Senate of the United States, and could not bind the House or furnish evidence for its consideration. It would be to us simply hearsay and inadmissible, as laid down in the report of Speaker Keifer in the case of Donnelly *vs.* Washburn, in the Forty-sixth Congress.

The committee concede the right of the House to investigate the title of Oates to a seat, even if Mabson has been guilty of such negligence and laches as to preclude him from contesting for the seat, as a party and litigant. But does his affidavit make a case calling on the House to institute an inquiry and investigation for its own vindication, or to purge itself of a member unelected, in fact?

The charges of fraud and illegality are general. At what precincts committed, or in what counties even, is not alleged. Of what particular acts they consisted is not stated. No witness is named who will furnish testimony of particular acts. In fact, no witnesses are named at all.

The committee are not put in possession of a single fact of fraud or illegality, or furnished with the medium of evidence by which the same may even seem susceptible of proof. No case is therefore made for invoking the jurisdiction of the House to investigate in order to protect its own rights and dignity.

The application for extension of time being disposed of, the question recurs as to the final disposition to be made of the case. In the presence of contestant the committee proposed to allow sufficient time to enable the testimony already taken to be placed on file if it was claimed by him that its presence might change the result; but it was admitted by him that the testimony aforesaid, in addition to the evidence on file, would not overcome or materially change the majority for the sitting member, and the committee therefore deemed it unnecessary to delay in order to put the same on file.

And it being conceded by contestant and found by the committee that the evidence now before it shows a large majority for Oates, the sitting member, we therefore report the following resolution:

Resolved, That W. C. Oates, the sitting member, was duly elected, and is entitled to the seat occupied by him in this House as the Representative from the third district of Alabama in the Forty-seventh Congress.

After this report had been made and submitted, the contestant filed a supplemental affidavit, covering some of the objections pointed out in the report to his former application, and asking for further time to take testimony in the district.

The affidavit having been read to the full committee, it was held by a majority thereof that the application came too late; that it would be dangerous to establish a precedent allowing a contestant or contestee, after finally submitting their cases, to ascertain from the report of the committee the grounds upon which he had been overruled, and to then supplement his application by a new affidavit, avoiding the decision, and thus open up the case again. Such a practice your committee think would lead to interminable delays, and would transform the committee into mere advisers of the parties. The committee are of opinion that parties should be bound by a reasonable degree of diligence, and that there should be a time fixed beyond which the doors for the reception of *ex parte* affidavits or evidence should be shut. Inasmuch as there was no application to file additional affidavits before the subcommittee until after its report was made, the committee are of opinion the last affidavit came too late, and should not be considered.

Some doubts exist in the minds of the majority of your committee about the form of a resolution which should be reported in this case for adoption by the House. It is unnecessary to state the reasons of this diversity of opinion. In order that the case may speedily be disposed of without prejudice to any one, a majority of the committee report the following resolution for adoption by the House:

Resolved, That contestant, A. A. Mabson, have leave to withdraw his papers without prejudice.

VIEWS OF THE MINORITY.

In the matter of contest between A. A. Mabson and W. C. Oates, from the State of Alabama.

HOUSE OF REPRESENTATIVES,
Washington, D. C., March, 1882.

The undersigned, members of the Committee on Elections, make the following minority report :

It is admitted that the contestant herein gave the proper notice of contest, and within the time prescribed by law; and that contestee, also, within the time required, filed his reply thereto, putting in issue all the material allegations contained and charged in said notice of contest; all of which will be found fully set forth in the majority report herein, and the minority do not herein repeat the record. It also fully appears from the evidence that contestant proceeded to take testimony in the matter, and did succeed in taking considerable evidence, and endeavored to take additional evidence, but, for reasons hereinafter set forth, failed to procure the same.

Contestant filed an affidavit and motion that he be granted further time to take evidence; in which affidavit he set forth the reasons for such motion and the diligence which he had used to procure the same. It was found by a part of the committee that the showing was insufficient, but before the report was agreed upon, and now returned by the majority of the committee, contestant filed another affidavit, substantially the same as the first, but more in detail. This was not received by the majority, and further time refused, notwithstanding the fact that contestant offered to take the evidence at his own expense.

The minority cannot agree with the majority of the committee in this action, as we believe that contestant used due diligence in endeavoring to procure his evidence in time, and it is shown that he was prevented from so doing without fault or neglect on his part, and that justice to contestant, as well as to the contestee, and all others in the district for which the contest is made, and against whom charges of fraud and wrong are made, demands that a full investigation be had; and if the charges were sustained, contestant should have his rights; and if found untrue, he should find no recognition here; but truth should be known through the investigation demanded, and we make especial reference to the affidavit of contestant, hereto attached and made a part of this report, said affidavit being the same submitted to the committee, and by a majority found insufficient.

And in view of the facts the minority submit this report, and ask that the following resolution be adopted:

Resolved, That A. A. Mabson be allowed further time, not exceeding forty days, to take, at his own expense, such evidence in support of his said notice of contest as he may desire, and that contestee shall have thirty days thereafter to take such evidence as he may deem proper in rebuttal.

WM. G. THOMPSON.
A. H. PETTIBONE.
S. H. MILLER.
JOHN PAUL.
F. JACOBS, JR.
GEO. C. HAZELTON.

WASHINGTON CITY,
District of Columbia:

Algernon A. Mabson, being duly sworn, deposes and says that he is the contestant in the contested-election case of A. A. Mabson against W. C. Oates, from the third Congressional district of Alabama, now pending in the Forty-seventh Congress.

That in support of his motion for further time in which to take testimony in said election case, which he is advised that his counsel heretofore made before the Committee on Elections of the House of Representatives, he says that he was prevented from sooner making this statement because of enforced and unavoidable absence from the city of Washington; that he was in Washington during the present session of Congress until its recess, and then he was compelled to return to Alabama, to the city of Mobile, in order to be present at a session of the circuit court of the United States, which commenced in that city on the 10th day of the last month; that he had been appointed, or rather was notified by the circuit judge that he would be appointed, in open court, general master in chancery of the court, and special master in chancery of the Mobile and Ohio Railroad, and was required to be present at the beginning of the session in order to receive his appointment, &c.; that he was soon relieved from the necessity of attending on the court, when he was attacked by sickness, viz, pneumonia, and was by his illness precluded from traveling; that his counsel notified him, by letter of date the 19th of January, of the necessity of his appearing and acting in this case, but he had left Mobile before the arrival of the letter, being called to his home in Union Springs by the serious illness and expected death of one of his children, and therefore did not receive this notification until he stopped in Mobile on Monday last, the 30th of January, when he had returned to Mobile from Union Springs; that he did not believe action would be taken by the committee in this case until the testimony in the case had been printed, and believed he could be in Mobile on the 10th of last month, and remain there two or three days, and return to Washington in due time, and would have done so had he not been prevented by illness from so doing; that he arrived in Washington at 3 o'clock p. m. this 2d day of February.

Deponent avers that he used due diligence in taking testimony, and having the same taken, during the time allowed him by law in which to take the same, and that it was impossible for him, for the reasons hereinafter stated, by the use of due diligence, to have taken said testimony during said time.

With the single exception of registers in bankruptcy and judges of the United States court, the only officers before whom his testimony could be taken were officers under the laws of the State of Alabama, and as neither a register of bankruptcy or judge of a United States court resided in his Congressional district, he was compelled to rely entirely upon the State officers before whom to have witnesses examined in his behalf; that the State officers, for reasons hereinafter related, are all members of the political party to which contestee belongs, viz, the Democratic, and are all opposed to affiant and inimical to his contest, and favorable to the contestee.

They are also opposed to the proving by testimony before any tribunal of the fraudulent and illegal practices alleged in affiant's notice of contest, because they favor the same, and were, as will be hereinafter shown, elected to their respective offices by the fraudulent and illegal stuffing of ballot-boxes, and other unlawful and fraudulent methods that are alleged in affiant's notice of contest to have been practiced in the pretended election of contestee. Affiant therefore met with difficulties and embarrassment on every hand in attempting to find persons before whom his testimony could be properly taken.

Affiant avers that he duly served notice and had subpoenaed to be examined in his behalf about two hundred witnesses, before H. H. Smith, a notary public at Ridgley, in Bullock County, and the same were duly examined, but the said testimony has not been forwarded to the Clerk of the House of Representatives by the said H. H. Smith,

and is not now before the committee; and affiant avers, and so charges, that the said testimony was withheld by reason of conspiracy and collusion between said Smith and contestee or persons acting in his behalf; that he spoke to said Smith about forwarding the testimony after the same had been concluded, and the said Smith made no objection thereto and made no demand for payment of any sum of money as a prerequisite to his forwarding the same. That he paid the said Smith about forty-five dollars for said service, and still owes him about fifteen dollars, but, as before stated, the said Smith never required that this latter sum should be paid before forwarding the testimony, and though affiant has conversed with the said Smith several times since taking the testimony, he never gave affiant to know that the testimony had not been forwarded as by law required, or made demand for the balance due, but on the contrary consented to forward the same without prepayment thereof. Affiant cannot now give the names of the witnesses examined as aforesaid, because the notice in which they are contained was delivered to the said Smith to be forwarded with the testimony.

Affiant avers that before W. O. Baldwin, mayor of Union Springs, in Bullock County, there were regularly subpoenaed and in attendance to be examined in his behalf, on the 20th day of January, 1881, two hundred and fifty witnesses; that he duly appeared before said Baldwin with his said witnesses at the time named, and demanded that the examination should proceed; that a number of lawyers, appearing for said contestee, insisted before said Baldwin that he had no power to take said testimony, because he was a relative of contestant, he being, in fact, the cousin of contestant's wife; that contestant insisted that the examination should proceed, and that the House of Representatives might pass upon its legality; but the said Baldwin, being in sympathy with contestee, and favoring the fraudulent and illegal practice by which contestee was made to receive his certificate of election, and inimical to the contestant, and with a design to embarrass and obstruct contestant, refused to take the said testimony because he was the cousin of contestant's wife, upon objection for this reason alone, made as aforesaid by the attorneys for contestee; and affiant avers that no officers under the laws of the State of Alabama, in said county, competent to take said testimony could be found by him whom he would have reasonable ground to believe would be as reasonable and fair in taking testimony in his behalf as the said Baldwin; and affiant avers that the time and expense and labor of summoning and preparing to examine and causing the attendance of witnesses were without avail to him, for the reason aforesaid. Affiant made application to the judge of probate of Bullock County, I. B. Feagin, to take his testimony, but the said Feagin, being in sympathy with the frauds committed in behalf of said votes, refused to take the testimony for affiant, he, the said Feagin, having obtained his office in the same way that contestee obtained his seat in this Congress, in this, that though the said Feagin was actually defeated in the election in which he was a candidate for probate judge by more than two thousand votes majority actually received by his opponent, yet by the same fraudulent practices charged by me to have occurred in my election he was declared elected, and now holds the office.

Though affiant's forty days had expired he still persisted in trying to take testimony, in order that this honorable committee might be made to know, as far as lay in his power to enable them to learn by legal proof, the merits of his contest, and to sustain his application for further time in which to take testimony, and for this reason before Simeon O'Neil, judge of probate of Russell County, affiant having duly served notice upon contestee, and the said O'Neil having agreed to take his testimony, had in attendance before him, on, to wit, February 28, 1881, a large number of witnesses, but the said O'Neil, against the protest and objections of affiant, refused to examine said witnesses, after having issued and served subpoenas for said witnesses at expense of affiant.

Affiant avers that in taking his testimony he tried to obtain the services of one James B. Powell, of Union Springs, Alabama, he being a Democrat in politics and there being no Republican lawyers in his district; that he did retain said Powell, who agreed to appear for him, but that when the examination of his witnesses had commenced before H. H. Smith, as aforesaid, the said Powell announced that he appeared for contestee; this notwithstanding that contestee had other attorneys, as in fact all the attorneys present wherever affiant attempted to take testimony rendered services for said contestee; and affiant avers that the said Oates induced the said Powell to refuse to appear for him wholly for the purpose of embarrassing and obstructing the said affiant in the taking of his testimony. Affiant was therefore compelled to take his testimony without the assistance of a lawyer.

Affiant submits that the time, forty days, allowed him in which to take his testimony was wholly inadequate, and that the time was not fixed in contemplation that cases of the character of his could or would exist. In this forty days are included about six Sundays, leaving affiant only thirty-four working days. His charges of fraudulent miscounting, or failing to count his votes, or counting votes cast for him for contestee, or the fraudulent refusing to count his votes by the county supervisors of election, involve the necessity of examining the witnesses in 24 precincts of this district, to wit, 4 in Lee County, 4 in Russell, 6 in Bullock, 5 in Henry, and 5 in Barbour;

that the said district is very large, having an area of 5,740 square miles, being 127 miles in length, and means of communication between its different parts very circuitous, it being supplied with no direct railway connections. For example, to go from Abbeville, in Henry County, to Opelika, in Lee County, would require about 48 hours by the most expeditious mode of travel.

In all of these precincts, except in the three as stated in his notice of contest, the county supervisors of election had appointed only Democratic managers of the election, with the fraudulent intent of preventing a fair election, as affiant upon oath states, so that the party to which affiant belongs had no representative at the several voting precincts throughout his district to see that the elections in the several precincts were honestly and lawfully conducted. Affiant avers, of his own knowledge, that a member of the Republican party, fully competent, could be found in every precinct of his district to act as a manager of election. Therefore affiant is compelled to prove his allegations in his notice of contest by examining persons who took down, as far as practicable, the names of the persons who voted for him at the several precincts, and prove the frauds by this character of evidence, and in other cases where no such account was kept to examine each voter separately and prove by his own testimony for whom he cast his ballot; that under the old law of Alabama, in existence, he believes, for a great number of years, each ballot was required to be numbered with the number of the voter's name on the poll-list, and thus, by producing in evidence the ballots on the examination of the voter the fraud could be proven, and it would be only necessary to examine the witnesses where ballots had been changed. But to prevent the detection of fraud and to facilitate the same the legislature of Alabama recently repealed the law providing for the numbering of the ballots, so that now it is, as aforesaid, necessary, in order to prove the said frauds, to examine each witness who voted the Republican ticket.

It would therefore be necessary for affiant, in order to prove the allegations contained in his notice of contest, to examine at least one thousand witnesses, in addition to those already examined, these witnesses being in localities in all parts of his district.

Affiant submits that the testimony taken in his behalf in Lee County fully sustains the allegations in his notice of contest, as to the precincts in that county and generally as to the character of the frauds in behalf of the contestee at the election and as alleged by him.

Contestee avers that since the Congressional and State election occurring on a day in November, 1874, and at which said election numerous acts of intimidation, consisting of threats, violence, and murder, were committed, and which said election resulted in placing the government of the State in the hands of persons elected by the Democratic party, nothing resembling a fair election has occurred in his district in any election where a Republican was a candidate for office; that this is generally known, admitted, and boasted of by members of the Democratic party.

That in counties such as Barbour, Lee, Russell, and Bullock, in his district, where the Republicans have majorities of thousands, it is utterly impossible for them to elect even a justice of the peace in any precinct.

They cast their ballots, but the ballots are not counted at all, or are counted for the opponent of the person voted for. Affiant states that if he is permitted time to investigate the last election, or if this committee will investigate the same, they will find that the election was a mere farce; that there was no desire or intention on the part of the officers designated by the law to conduct or supervise said election that it should be fairly conducted.

Affiant is corroborated in these allegations by evidence of the highest character, to which he now refers, to wit, the report of a select committee of the House of Representatives on affairs in Alabama, made to the second session of the Forty-third Congress on February 23, 1875, by Mr. Coburn, chairman of said committee, with the evidence accompanying the same, and the report of the subcommittee of Privileges and Elections of the Senate of the United States, by Mr. Cameron, chairman, made to the second session of the Forty-third Congress on March 3, 1877, with the evidence accompanying the same. In this report the committee say:

"Being clothed with the power to make, alter, or amend the laws of the State, all further resort to any form of physical violence on the part of the Democrats, in order to control the ballot-boxes, became unnecessary. A different plan presented itself which was more acceptable, because more certain of success, and more secret in its operations.

"Fraud, under color of the forms of law, was substituted for violence, and the laws of the State regulating and controlling the registration of voters and the conduct of elections were so framed as to offer every encouragement to those to whom was committed the fraudulent changing of votes after they had been deposited, or the making of false and fraudulent election returns, or the failure to open the polls and conduct the elections in large Republican precincts, or the using of the method of obstruction and embarrassment with which the laws had provided them to exclude from the bal-

lot-box the ballots of qualified electors. The committee find that throughout the State, as far as their investigation extended, and without exception in one or the other forms which the laws permitted, the Republicans were either deprived of the opportunity to cast their ballots, or the ballots, when cast, were changed or destroyed whenever and wherever it was deemed necessary to serve the purposes of the Democratic party. To designate the elections of August and November, 1876, in Alabama, as elections by the people, in so far as the purpose of an election is to indicate the choice or will of the people, would be an abuse of the term."

And affiant avers that the condition of affairs in his district, as above described, has continued to be the same as reported by the said several committees, and was the same at the election of November 2, 1880; and that this an investigation of the said pretended election of contestee will fully show.

A. A. MABSON.

Sworn to and subscribed before me this third day of February, A. D. 1882.

A. S. TAYLOR,
Notary Public.

To the honorable the House of Representatives of the United States:

As supplemental to the affidavit heretofore by him made, and now before your Committee on Elections, in the case of Mabson vs. Oates, affiant states that he used due diligence in taking testimony during the time allowed him by law; that he commenced taking testimony only a few days—to wit, seven days—after his time for taking testimony began to run, and long before his testimony in Lee County was taken; that his earlier testimony is not before you because of the detention thereof by H. H. Smith, as stated in his former affidavit; that the counsel for contestee consumed the time of contestant in taking testimony by asking his witnesses needless and irrelevant questions, for the purpose of taking up his time, in many instances willfully consuming three or four hours in cross-examining his witnesses, when a few minutes were all that was actually necessary for any legitimate purposes of such examination; that crowds of white men, supporters of contestee, would be constantly at the places where his witnesses were being examined, and would by their boisterous conduct purposely embarrass and intimidate his witnesses, who were all colored men; that it is the custom of trade in Bullock County, in his district, for the merchants to give to the farmers credit for supplies furnished, but when the witnesses for contestant were at Union Springs, in Bullock County, for the purpose of testifying, many of these merchants refused to give credit to those whom they had formerly credited, because they were witnesses for contestant, and would refuse the same and tell them to return home and not be fooling about politics, and to go to contestant for money which they might need; and that contestant was greatly embarrassed by having to supply the necessities of so large a number of witnesses, as it was intended by the said merchants, by their refusals as aforesaid, that he should be. Affiant was obstructed in taking testimony in Henry County, in his district, first, by the statement of contestee made to him at Opelika, in Lee County, that some of the young men in Henry County, his nephews among them, had banded together for the purpose of driving him out of Henry County if he should go there to take his testimony, but that contestee discountenanced such proceedings and tried to dissuade them, but did not know whether he could control them or not.

Secondly. That J. T. Kitchen was present at the election at Columbia precinct, in said county, and could prove by his testimony that he saw the managers of election at said precinct, who were all Democrats, changing the ballots after they had been cast, by substituting for ballots actually cast for contestant fraudulent ballots for contestee, but that said Kitchen, as affiant believes and charges, to prevent his testifying for affiant, was arrested on a false charge, and confined in jail until after affiant's time for taking testimony had expired, when he was released and the prosecution abandoned.

Affiant now states upon oath that he never at any time said to one John T. Ware, or to any one, that he was making this contest for the purpose of making money, nor did he ever state to any one that he knew he had been defeated in the election. On the contrary, contestant states that he is not induced by any hope or expectation of receiving money in making this contest, but that he prosecutes the same wholly from a desire to fulfill a duty which he owes to those who voted for him, and who were deprived of the lawful benefit and results of their ballots cast by fraudulent acts on the part of officers of the election in failing to count and return the ballots cast for him, and in substituting therefor ballots cast for contestee. Affiant states that he has always believed since the election, and now believes, and so avers, that he was actually elected and contestee defeated by the lawful votes cast for him on the day of election.

Affiant states if he were allowed sufficient further time in which to take testimony, he could prove to the best of his knowledge and belief the following facts:

That in four precincts in Lee County, in his district, three hundred and ten votes which were cast for him were fraudulently counted for contestee; that is, in precinct

No. 4, 71 votes; precinct No. 5, 100 votes; precinct No. 6, 50 votes; and precinct No. 9, 75 votes.

That in four precincts of Russell County six hundred and seventy ballots cast for him were fraudulently counted for contestee, to wit: Precinct No. 3, 100; precinct No. 5, 100; precinct No. 7, 240; and precinct No. 10, 230 votes.

That in four precincts of Henry County, two hundred and ninety votes which were cast for him were fraudulently counted for contestee, to wit: In precinct No. 1, 50 ballots; precinct No. 4, 150 ballots; precinct No. 12, 50 ballots; and precinct No. 13, 40 ballots.

That in five precincts of Barbour County nine hundred and forty-two ballots which were cast for him were fraudulently counted for contestee, to wit: Precinct No. 1, 167 ballots; precinct No. 2, 200; box No. 1, precinct No. 4, 125; box No. 2, precinct No. 5, 350 ballots; and box No. 3, precinct No. 5, 100 ballots.

And affiant avers that in the elections in all of said election precincts the managers and returning officers were wholly and entirely members of the political party to which contestee belonged, opposed affiant's election, and favored the election of contestee. Affiant avers that in Bullock County eighteen hundred and eighty-seven votes were cast for him, and four hundred and thirty-six for contestee, which the county board of canvassers refused to count, upon the return made by them, in estimating the result of the said election in said county, on the ground that the poll-lists accompanying the returns from the precincts were not signed—the same being not a lawful reason for their refusal to count and estimate these votes in ascertaining the result.

Affiant avers that on election day more than eight hundred lawfully qualified electors, desiring and intending to vote for him, were present at the polling place for the precinct commonly known as Seals Station precinct, in Russell County, but that the opening of the polls in said precinct was prevented by violence and intimidation on the part of the friends of contestee, who desired to prevent an election in said precinct, because of the large majority there for contestant. Affiant avers that 138 votes from Hilliardsville precinct, in Henry County, and 72 from Hicks' Shop, in said county, were unlawfully counted for contestee, no lawful or sufficient return being made thereof from which the county board of canvassers could estimate the same.

Affiant submits that he has proved the facts alleged in relation to precincts No. 9, 4, and 6 in Lee County, by his testimony already taken. The vote, as certified by the secretary of state, at said election was for contestee, 10,614; for contestant, 5,636; but the allegations aforesaid show that there should be added to contestant's vote and taken from contestee's in—

| | |
|---------------------|--------------|
| Lee County..... | 296 |
| Russell County..... | 670 |
| Henry County..... | 290 |
| Barbour County..... | 942 |
| Total | 2,198 |

That there should be added to contestant's vote the votes not counted by the county board of canvassers in Bullock County, 1,877, and to contestee's, 436.

That contestant is entitled to 800 votes from Seals Station precinct, as aforesaid.

That contestee is not entitled to 215 votes counted for him in Henry County, as aforesaid.

This would make the actual result of the ballot cast in said election to be as follows:

| Mabson. | Oates. |
|---------------|--------|
| Official..... | 5,636 |
| Add..... | 2,198 |
| | 7,834 |
| Add..... | 1,877 |
| | 9,711 |
| Add..... | 800 |
| | 10,511 |
| Official..... | 10,614 |
| Less..... | 2,198 |
| | 8,416 |
| Add..... | 436 |
| | 8,852 |
| Less..... | 210 |
| | 8,642 |

Showing the true result to be a majority of votes for contestant of 1,869 votes which affiant verily believes to be substantially correct.

A. A. MABSON.

FEBRUARY 14, 1882.

Sworn and subscribed to before me this 14th day of February, 1882.

[SEAL.]

THOS. J. MYERS,
Notary Public.

JAMES Q. SMITH vs. CHARLES M. SHELLEY.**FOURTH CONGRESSIONAL DISTRICT OF ALABAMA.**

Contestant charged fraud, ballot-box stuffing, and conspiracy on the part of the party friends of contestee, and the illegal rejection of returns.

Held, That returns rejected because signed by the mark (X) of the inspectors, the same should have been received and the vote counted.

Ballot rejected and not counted because deposited in a cigar-box, on account of the failure of the proper officers to provide the usual ballot-box, or blanks for returns, should be counted.

Where one who had been appointed an inspector of election refused to act, although present, and after the closing of the polls he appears in the room and claims and takes the ballot-box containing the ballots and puts it in a satchel, and such person being remonstrated with hands back another box containing different ballots which are counted, the returns from that precinct are corrected as the votes are proven to be by the evidence.

Where the inspectors of election failed to appear and open the polls, and there are no blanks or ballot-box provided, and the citizens then organize, and a list of the voters present is taken, and an expression of preference from each as to his choice for Representative in Congress, a return thereof is refused and not counted, because no polls were in fact opened and no ballots actually cast.

The House adopted the majority report, and contestant having died the seat was declared vacant.

JUNE 27, 1882.—Mr. W. G. THOMPSON, from the Committee on Elections, submitted the following

REPORT:

The Committee on Elections, to whom was referred the above-entitled contested election, have had the same under consideration, and submit the following report :

James Q. Smith and Charles M. Shelley were opposing candidates for a seat in the Forty-seventh Congress, from the fourth Congressional district of Alabama, at the November election held on the 2d day of November, 1880.

By the returns of said election, as certified to the secretary of said State, it appears that Mr. Shelley received of the votes 9,301, Mr. Smith received of the votes 6,650, showing Mr. Shelley's majority to be 2,651.

On the 3d day of December, 1880, Mr. Smith caused to be served upon Mr. Shelley a notice of his intention to contest, as the law provides, as shown by the certificate in record, page 26.

In this notice of contest it was alleged by contestant that fraud, ballot-box stuffing, and conspiracy between the partisan friends and supporters of contestee had been resorted to, by means of which he was defrauded out of his election, and that as a matter of fact a large majority of the votes cast at said election were cast for contestant and that he was duly elected, and specifically charged that these frauds had been practiced in the several voting precincts in the counties of Hale, Perry,

Lowndes, Dallas, and Wilcox, and which precincts will hereafter be named in order. The contestee filed his answer denying all the charges set forth in the said notice, thereby making it incumbent upon the contestant to establish by competent evidence the truth of his allegations.

Mr. Shelley, having received the certificate of election, was admitted to his seat when the Forty-seventh Congress was organized, and has been during the pendency of the contest the sitting member and still retains the same.

It appearing upon the face of the records, as before stated, that Mr. Shelley having received a majority of 2,651 of the votes cast, contestant must by proper evidence overcome this majority and show fraud through which he was deprived of the votes necessary to make such change.

It is deemed proper to call attention to the condition of this district, so far as population, color, and political proclivities are apparent, not only now but from the time the district was first organized, and this is shown by the evidence.

When the Democratic party came into power in 1874 the work of reorganizing the Congressional districts was speedily commenced, the object being to make all the districts Democratic. After the most laborious and careful investigation of this matter, it was found impossible to do so, and it was then considered best to put into one district all the large Republican counties adjoining each other, to be called the fourth Congressional district of Alabama. The acknowledged Republican majority in Dallas County was, at the State election of 1874, 4,957; in Hale County, 2,304; in Lowndes County, 2,953; in Wilcox County, 2,126; in Perry County, 2,606, making a clear Republican majority in the district of 14,946 votes. At the Presidential election in 1876, Hayes, Republican, received a majority over Tilden, Democrat, of 9,446 votes, and in the same year in the State election, Woodruff, Independent, receiving Republican support, had a majority over Houston, Democrat, for governor, of 9,115 votes. In the Congressional election of the same year, Rapier, running as the regular Republican nominee, and Haralson running as a bolting candidate (both persons of the negro race), the joint majority over Shelley, Democrat, was 6,256 votes. The census returns of 1880 show that there are now in the counties composing the district 135,881 persons of the negro race and 32,855 white persons, disclosing a very large increase of the negro race, so that on a calculation it may be assumed that there is, in fact, now a majority of 18,000 negro Republican voters over white Democratic voters in the district. The proof made by the contestant in this contest clearly shows that from 95 to 97½ per cent. of the negro electors cast a Republican ballot for Republican candidates in said district *when permitted to do so*.

And in fact these considerations give emphasis to contestant's declarations in argument—

The South was to be made solid, and the fourth district must be, and was, captured to accomplish this much to be desired end. The negro electors of the fourth district are now as successfully deprived of the elective franchise as when they wore the chains of slavery, were sold at the auction block, and their backs quivered at the overseer's lash.

This is the language of a citizen of the State of Alabama since his early boyhood—a man who has held high positions of honor and trust—the contestant in this case, and made in the light of the facts he has presented in his evidence in this contest.

The evidence adduced by contestant shows that in Mitchell's voting precinct, in Dallas County, he had cast for him 360 votes and for contestee 1 vote. This vote, although returned and delivered to the proper

officer, was rejected, and the supervisors refused to open or count the ballots, for the alleged reason that the statements made by the inspectors were not signed. The same objections were made to the returns from many other precincts, when in fact they were signed, but frequently the parties signing the same did so by making their mark, and this is legal even under the laws of the State of Alabama. (See title 1, chap. 1, Code of Alabama. Sec. 1.—*Signification of words*: “Signatures or subscription includes mark when the person cannot write, his name being written near it and witnessed by a person who writes his own name as a witness.”)

And your committee cannot escape the conviction, from the testimony, that a thoroughly organized and preconcerted plan and purpose had been made and understood by and amongst the Democratic partisans and supporters of Mr. Shelley, that in all the precincts where the Republican majorities were large and Democratic voters very few that the Democratic inspectors of such precinct should fail and refuse to open the polls on the day of election, and thereby leave the work of so doing in the hands of colored voters whose education was such as to make it quite probable that some clerical error would occur, so as to furnish an excuse for rejecting the box entirely.

Strong corroborative evidence of this is found in the further fact that the county supervisors refused to appoint any Republican in such precincts selected by the Republican county committees, but invariably selected one who was unable to read or write, or who, however honest in intention, would not be competent to make out the required returns in a proper and legal manner, or technically correct in all particulars, and the evidence conclusively shows that the Democratic supervisors, composed of the sheriff, probate judge, and clerk of the court of the county, did not fail to find a pretext for refusing to count such boxes, where, by sacrificing *one* vote for the Democrat, they would destroy 360 for the Republican. This the committee, however much they may admire the heroic effort for a fair vote and honest count, cannot in this case allow the sacrifice.

The testimony in support of this is found as follows: B. Hatcher, pp. 56-59; Lot Thomas, pp. 111-113; Berry Moore, pp. 113, 114; Geo. F. Beach, pp. 100-104, 375-378, and C. Duke, pp. 147, 148.

B. F. Hatcher, supervisor, returns as follows:

U. S. supervisor's return of votes cast for Representatives in Congress from the 4th Congressional district of the State of Alabama, at precinct or poll No. 35, commonly called Mitchell's, in the county of Dallas, on the 2nd day of November, 1880.

| Names of candidates. | Number of votes, as returned by Inspectors. | Number of votes, U. S. supervisor's return. |
|--------------------------------|---|---|
| J. Q. Smith | 360 | 360 |
| C. M. Shelly | 1 | 1 |
| Total Congressional vote | 361 | 361 |

I, the undersigned, supervisor of election, appointed by the circuit court of the United States, hereby certify that the foregoing return is true and correct.
Witness my hand at Mitchell's, Ala., this 2nd day of November, 1880.

BEN. F. HATCHER,
Supervisor.

CAHABA PRECINCT, DALLAS COUNTY.

This box was not counted by the county supervisors because the statement of the result returned was informal, but the evidence shows that no blanks for that purpose were furnished. And the evidence is clear as to how the actual vote was (see evidence of S. G. Hatcher, pp. 61-71; Simon Ulmer, pp. 65, 66; Elisha Pittman, pp. 66-71; Wesley Thomas, pp. 71-75; Osborn Gardner, pp. 75-78; George F. Beach, 100-104; and J. C. Duke, pp. 147, 148).

SUPERVISOR'S RETURN.

U. S. supervisor's return of votes cast for Representatives in Congress from the 4th Congressional district of the State of Alabama, at precinct or poll No. 16, commonly called Cahaba, in the county of Dallas, on the 2d day of November, 1860.

| Names of candidates. | Number of votes, as returned by inspectors. | Number of votes, U. S. supervisor's return. |
|--------------------------------|---|---|
| James Q. Smith | 375 | |
| Charles M. Shelley | 11 | |
| Wm. J. Stevens | 00 | |
| Total Congressional vote | 386 | |

Box thrown out; returns irregular.

I, the undersigned, supervisor of election, appointed by the circuit court of the United States, hereby certify that the foregoing return is true and correct.

Witness my hand at Cahaba, Ala., this 20th day of November, 1860.

ELISHA PITTMAN,
Supervisor.

PINE PLAT PRECINCT, DALLAS COUNTY.

The returns rejected because signed by making mark for signature. Evidence of Frank Johnson, pp. 81-84; S. Turner, pp. 84-87. Exhibit, p. 364. George F. Beach, pp. 100-104, 375-378.

SUPERVISOR'S RETURN.

U. S. supervisor's return of votes cast for Representatives in Congress from the 4th Congressional district of the State of Alabama, at precinct or poll No. 11, commonly called Pine Flat, in the county of Dallas, on the 2d day of November, 1860.

| Names of candidates. | Number of votes, as returned by inspectors. | Number of votes, U. S. supervisor's return. |
|--------------------------------|---|---|
| James Q. Smith | 280 | 280 |
| Charles M. Shelly | 26 | 26 |
| Total Congressional vote | 305 | 285 |

I, the undersigned, supervisor of election appointed by the circuit court of the United States, hereby certify that the foregoing return is true and correct.

Witness my hand at Pine Flat, Ala., this 5th day of November, 1860.

SKADE TURNER,
Supervisor.

RIVER PRECINCT, DALLAS COUNTY.

Evidence of Joseph Richardson, pp. 87-91. Exhibit, p. 363. Clifton Campbell, pp. 91-94; W. H. Hatcher, pp. 94-97; Dave Burns, pp. 97-100; George F. Beach, pp. 100-104, 375-378; and J. C. Duke, pp. 147, 148.

U. S. supervisor's return of votes cast for Representatives in Congress from the 4th Congressional district of the State of Alabama, at precinct or poll No. 10, commonly called River beat, in the county of Dallas, on the 2d day of November, 1880.

| Names of candidates. | Number of votes as returned by inspectors. | Number of votes U. S. supervisor's return. |
|-------------------------------|--|--|
| J. Q. Smith..... | 305 | 305 |
| G. Turner..... | 305 | 305 |
| Willard Warner..... | 305 | 305 |
| L. R. Smith..... | 305 | 305 |
| C. W. Buckley..... | 305 | 305 |
| J. J. Marten..... | 305 | 305 |
| B. S. Turner..... | 305 | 305 |
| D. D. Booth..... | 305 | 305 |
| W. S. Bird..... | 305 | 305 |
| N. S. McAfee..... | 305 | 305 |
| J. S. Clark..... | 305 | 305 |
| Bragg..... | 1 | ----- |
| O'Neal..... | 1 | ----- |
| Bester..... | 1 | ----- |
| Padgett..... | 1 | ----- |
| Waddle..... | 1 | ----- |
| Enoch..... | 1 | ----- |
| Saddle..... | 1 | ----- |
| Harris..... | 1 | ----- |
| Bowder..... | 1 | ----- |
| Jones..... | 1 | ----- |
| C. M. Shelley..... | 1 | ----- |
| Total Congressional vote..... | 306 | ----- |

MARTIN'S PRECINCT, DALLAS COUNTY.

In this precinct there were cast, as the evidence shows, for Smith 384 votes, and for Shelley 16 votes. The ballots were counted, the returns made out, placed in a box, and returned to the sheriff of the county, and delivered to him, but when opened by the county supervisors no returns found and none counted. The evidence is clear and abundant, both as to the votes cast for each candidate and that the return was made as the law requires, and was, when delivered to the sheriff by the returning officer, in the same condition as when it left the inspector's hands. The sheriff had the key to the box, and while the evidence does not show that he tampered with the box, it does show the facts set forth above; and the result was that Mr. Smith again lost 384 votes honestly cast for him, while Mr. Shelley lost 16. The Democratic loss is not so great as to cause extreme anguish of spirit in them, being consoled as they were by the fact that the Republicans lost 384 at the same time.

The evidence on this precinct is found as follows: N. Petteway, pp. 114-121; Abe Martin, pp. 121-124; J. C. Duke, pp. 147-148; and Exhibit, p. 361. In this precinct the Democratic inspectors refused to open the polls, and no blanks for the returns were furnished.

SUPERVISOR'S RETURN.

U. S. supervisor's return of votes cast for Representatives in Congress from the 4th Congressional district of the State of Alabama, at precinct or poll No. 7, commonly called Martin Sta., in the county of Dallas, on the 2d day of November, 1880.

| Names of candidates. | Number of votes, as returned by inspectors. | Number of votes, U. S. supervis. or's return. |
|-------------------------------|---|---|
| James Q. Smith..... | 384 | 384 |
| Charles M. Shelley..... | 16 | 16 |
| William Stebin..... | None..... | ..... |
| Total Congressional vote..... | 384 | ..... |

I, the undersigned, supervisor of election appointed by the circuit court of the United States, hereby certify that the foregoing return is true and correct.

Witness my hand, at Martin Sta., Ala., this 2^d day of November, 1880.

JOHN WESLEY,
Supervisor.

To J. W. DIMMICK,
Chief Supervisor of Elections, Montgomery, Ala.

The inspectors appointed by the co. refused to open the polls. I went for the ballot-box that was in the freight-house, in charge of S. Stinehardt, fr't ag't at Martin's Sta., and got it from his clerk; but Mr. Stinehardt met me and taken it away from me, and said no one should have it except Mr. Martin, and that if I or any one else put hands on it would get a ball in us. I sent for Mr. Martin twice before I could get it. I succeeded, however, in getting the boxes and opening the polls before nine o'clock. There was no blanks of any kind in the boxes, and we had to use writing paper. We done the very best that we could under the circumstances.

his
JOHN + WESTLY.
mark.

P. S.—Mr. Stinehardt, in whose employ I was, told me that because I taken the part I did that he had no further use for me.

LEXINGTON PRECINCT, DALLAS COUNTY.

The facts attending the vote in this precinct are similar to the one above. The evidence of J. Adams, pp. 124–129; Exhibit, p. 362; Horace Mosley, pp. 129–131; George T. Beach, pp. 100–104, 375–378; J. C. Duke, pp. 147, 148, shows convincingly to your committee that at this precinct there were cast for Mr. Smith 320 votes, and the Democratic supervisors in this case again failed to find any returns, which the evidence shows were in the box when delivered, and Smith again compelled to lose 320 votes, while Shelley lost none, having received none.

SUPERVISOR'S RETURN.

U. S. supervisor's return of votes cast for Representatives in Congress from the 4th Congressional district of the State of Alabama, at precinct or poll No. 9, commonly called Lexington, in the county of Dallas, on the 2d day of November, 1880.

| Names of candidates. | Number of votes, as returned by inspectors. | Number of votes, U. S. supervis. or's return. |
|-------------------------------|---|---|
| James Q. Smith..... | 320 | 320 |
| Total Congressional vote..... | 320 | 320 |

There wasn't any disturbance the 2d day November at the election Lexington beat. The whites acted well. No man offered any riot, disputing about the election. Close at 5 o'clock p. m. The poll opened 4 minutes after 6 o'clock.

I, the undersigned, supervisor of election appointed by the circuit court of the United States, hereby certify that the foregoing return is true and correct.

Witness my hand at Lexington, Ala., this 4th day of November, 1880.

CHILLATCHIE PRECINCT, DALLAS COUNTY.

Evidence—L. Irby, pp. 131–138; Exhibits, pp. 138–140, 370; Toney Ables, pp. 141–144; G. F. Beach, pp. 100–104; and J. C. Duke, pp. 147, 148.

In this precinct the Democratic inspectors refused and failed to open the polls. The citizens did so, but as the county supervisors failed to furnish either ballot-boxes or blanks for the returns, the votes were put into a cigar-box and counted. Certified returns made out and delivered to the sheriff, or rather an offer to do so; when, as the evidence shows, he was told by the officer to take it away, as the d——d thing was not wanted in his office. This officer had no authority to refuse receiving the box; but as it contained 124 votes for Smith, and but one for Shelley, his profanity as well as refusal may be accounted for.

SUPERVISOR'S RETURN.

U. S. supervisor's return of votes cast for Representatives in Congress from the fourth Congressional district of the State of Alabama, at precinct or poll No. 26, commonly called Chillatchie, in the county of Dallas, on the 2d day of November, 1880.

| Names of candidates. | Number of votes as returned by inspectors. | Number of votes U. S. supervisor's or's return. |
|--|--|---|
| For electors for President and Vice-President of the U. S. States: | . | . |
| James Q. Smith..... | 124 | 124 |
| W. J. Stephens..... | 124 | 1 |
| Total Congressional vote..... | 124 | 124 |

I, the undersigned, supervisor of election appointed by the circuit court of the United States, hereby certify that the foregoing return is true and correct.

Witness my hand at Chillatchie, Ala., this 2d day of November, 1880.

LINDSAY IRBY,
Supervisor.

To J. W. DIMMICK,

Chief Supervisor of Elections, Montgomery, Ala. :

The polls at this voting place were opened by the colored citizens. The inspectors appointed by the co. (if any) never showed themselves, nor could we find out who they were, nor could we get any ballot-box. We voted in a segar-box. So far as to law the election was all right, except we voted in a segar-box.

LINDSAY IRBY.

In all the foregoing precincts the Democratic inspectors failed and refused to open the polls, thus compelling the citizens to appoint others, whom it was supposed, on account of illiteracy, would fail to make out the statements, returns, &c., in a legal manner, and thus furnish the county supervisors, who appointed these inspectors, an excuse for rejecting the returns. This failure on the part of the inspectors invariably occurred in precincts largely Republican, and, read in the light of the subsequent action of the county supervisors, furnishes convincing evidence

of collusion and fraud, by which the electors of these precincts were to be cheated out of their votes and Mr. Smith out of his election, and does not well comport with the resolve for a free, fair vote and an honest count.

PINTLALA PRECINCT, LOWNDES COUNTY.

See evidence of Samuel M. Duncan, pp. 200-203; W. D. Gaskin, pp. 203, 207; exhibits, pp. 344, 345; Samuel Lee, pp. 207, 208; J. V. McDuffie, pp. 211, 216; B. W. Mason, pp. 554, 555 (contestee's witnesses).

In this precinct the Democratic inspectors failed to open polls, and the evidence shows that polls were opened by the voters, and that one E. P. Holcombe, who had been appointed by the county supervisors as an inspector, refused to act, although present. The election was quiet and orderly during the voting, but about the time the polls closed said Holcombe appeared in the room and claimed the box, and against the protest of the officers took the box and put it in a carpet-sack or sachel, in which he had, in the opinion of your committee, another ballot-box stuffed for the occasion, and which he, after disputing with the officers of the election for a time, took out and left instead of the one he had taken from the table, and it appears fully and conclusively that the box stolen by Holcombe contained 315 votes for Smith and 35 for Shelley, and the one substituted only 9 votes for Smith and the balance for Shelley.

This high-handed, unfigleafeed fraud is so grave and impudent your committee deem it proper to give the evidence, in part at least, in relation to this transaction:

WILLIAM D. GASKIN, a witness called and examined by the contestant, and in his behalf, being first duly sworn, deposes and says upon oath :

Question. Where do you reside; how long have you resided there; to what race do you belong; what is your occupation, and are you a Republican or Democrat in politics?—Answer. I reside in Pintlala beat, Lowndes County, Alabama, and have lived there about eighteen years; I belong to the African race; am a farmer by occupation, and a Republican in politics.

(Counsel objects to the examination of the witness, upon the ground that he resides outside of the district in which the commissioner resides, and in a different county.)

Q. Was there an election held in Pintlala beat, Lowndes County, on the 2d day of November, 1880, and who were the candidates for Congress voted for at that election?—A. There was an election held there on that day. The candidates were James Q. Smith and Charles M. Shelley.

Q. Who were the inspectors appointed by county authority to hold said election? Were they present to open the polls, and were they supporters of Charles M. Shelley for Congress, and were they Democrats in politics?—A. The inspectors appointed by the county authorities were E. P. Holcombe, D. W. McCarthy, and Robert Dandridge. Robert Dandridge and E. D. Holcombe were present, but McCarthy was not. Holcombe was a Democrat, and a warm supporter of Mr. Shelley, as was also McCarthy. Robert Dandridge was a Republican.

Q. Did E. P. Holcombe offer to open the polls and hold the election?—A. He pretended at first in the morning that he wanted to open the polls, and said that he had to wait for McCarthy. McCarthy did not come, and he refused then to act.

Q. Was Dandridge, the other inspector, present when Holcombe refused to act?—A. Yes, sir.

Q. Was Holcombe a white man, and is Dandridge a man of color?—A. Holcombe was a white man; Dandridge is a colored man.

Q. Who opened the polls and held the election?—A. Robert Dandridge, Philip Samuel, and Toney Davis.

Q. Did the inspectors take an oath as such; and before whom was it taken? Were there clerks appointed, and who were they?—A. The inspectors took an oath administered to them by Mr. Collins, a magistrate. Two clerks were appointed—Henry Green and Sampson M. Rives. They were sworn by the same magistrate.

Q. Was there any announcement that the polls were open, and at what hour?—A. The polls were announced open at about half past eight o'clock, as near as I remember.

Q. Do you know Philip Samuel and Toney Davis, and how long have they resided

in Pintlala beat, and are they over the age of twenty-one years?—A. I know both of them; they are each over twenty-one years of age, and have resided in that place for the last twelve years.

Q. What office did you hold on the day of the election; were you commissioned, and where is your commission now?

(Counsel for contestee objects to the question, upon the ground that it calls for secondary evidence.)

A. I was United States supervisor, I was commissioned; and my commission is at home.

Q. Were you present all the day of the election, and did you attend to the manner in which the voters cast their ballots, and did you carefully scrutinize the manner of conducting said election?—A. I was present during the day of the election and noticed the manner in which the voters cast their ballots, and I carefully scrutinized the manner in which the election was conducted.

Q. Who received the ballots from the voters; what did he do with them; did you keep a tally or any account of the number of ballots cast for each candidate for Congress at said election?—A. Robert Dandridge, one of the inspectors, received the ballots from the voters and passed them to another inspector, who deposited them in the box. I kept an account part of the day. There were but two candidates, and I kept an account between the two.

Q. What part of the day was it that you did not keep an account?—A. After about half past three o'clock I ceased to keep an account.

Q. After half past three o'clock were you in the room, and did you observe the voting? State, if you have any means of knowing, how many votes were cast after half past three o'clock, and for whom.—A. I was in the room, and observed the voting after half past three o'clock. The only means I had of knowing how many were cast was my seeing the ballots as they were handed in with the name of James Q. Smith upon them.

Q. Were the ballots deposited in the box counted?—A. They were not.

Q. State as near as you can the number of votes cast for James Q. Smith for Congress up to three and a half o'clock; state as near as you can the number of votes cast for him between the hour of three and a half o'clock and until the voting was over.—A. Up to three and a half o'clock he had gotten about two hundred and seventy or seventy-five votes; from my best judgment, from that time until the polls were closed, I should say he got between forty-five and fifty votes.

Q. State why it was the ballots were not counted.—A. About eight or ten minutes before the closing of the polls E. P. Holcombe came in the room and took the box from the table where it had been all day during the voting; he said he was a bailiff and had a right to take possession of the box. He put it in his sachel. Five or six minutes afterwards his son-in-law, Samuel J. Murray, came to the door of the room and urged him (Holcombe) to give him the sachel, saying he was in a hurry to go home. Thereupon, Holcombe took from the sachel a box other than the one in which the ballots had been deposited and then handed to Murray the sachel containing the box he had taken from the table. We did not discover that the box had been changed until Murray had driven off with the sachel containing the proper ballots that had been voted that day.

Q. Describe the boxes, and how you discovered that they had been changed?—A. They were two cigar-boxes. The right box was bound in bright red paper, and had a picture on one end of a man with a sword in his hand. The hole in which the ballots were passed was in the end of the box, and the end was split from one side of the hole to the edge of the box. The box that was substituted was bound with a kind of pale bluish paper, and had the bust of a man on the end of the box whose features were illuminated with a smile. This box also had a hole in the end of it, but was not split.

Q. Did the inspectors open the box that was left upon the table. And state if it was examined, and what you discovered it to be.

(Question objected to upon the ground that the box and contents are the best evidence of the matters called for, and when last heard from was in the hands of the friends of the contestant.)

A. We opened the box, after we discovered the fraud, to see what it contained. We did examine it, and found it stuffed with Shelley and Stephens tickets, and only about nine for Smith.

Q. Do you now state that the box left by Holcombe, and which you opened, is not the box in which the ballots cast during the day were deposited?—A. Yes, sir; I do.

Q. Do you know the number of colored voters in Pintlala beat, and do they chiefly vote the Republican or Democratic ticket?—A. There are, I think, between three hundred and fifty and three hundred and sixty, and they vote the Republican ticket; I know of no exception at the last election.

Q. Do you know the number of white men, voters of Pintlala beat, and do they chiefly vote the Republican or Democratic tickets?—A. There are between thirty and thirty-five white voters, I think, and with the exception of two, they all vote the Democratic ticket.

Q. Do you come to Montgomery voluntarily?—A. Yes, sir.

Cross-examined by JOHN F. WHITE, Esq., counsel for contestee:

Q. What are the politics of the inspectors who held that election?—A. They were Republicans.

Q. You stated that so many votes were cast for James Q. Smith at that beat; is that an accurate statement?—A. It was accurate up to the time that I kept the account.

Q. How many votes did Charles M. Shelley receive during the time you kept the account?—A. He received about twenty-one or two votes.

Q. Did he receive any after you ceased to keep account; and, if so, what is your best judgment as to the number?—A. My best judgment is that he received a few votes. I cannot state the number.

Q. Did you keep a written memorandum of the votes cast there that day?—A. I kept a tally of the votes as they were cast.

Q. Where is that tally-list?—A. Did not preserve it.

Q. You do not pretend to make an accurate statement of all the votes cast there that day and for whom they were cast, do you?—A. The account was accurate up to three and a half o'clock; as to the remainder, I give my best judgment.

Q. Who was present when Colonel Holcombe came in and took possession of that box?—A. Robert Dandridge, Toney Davis, Philip Samuel, Henry Green, Sampson M. Rives, and myself.

Q. What kind of sachel was it Holcombe had?—A. It looked like it was made of brown linen.

Q. Where are the parties you name as having been present when Holcombe came into the room?—A. They are all at their homes in Lowndes County, except Sampson M. Rives, who has moved away since the election.

Q. Do you know whether any or all of them were subpoenaed to attend this commission?—A. I do not.

Q. State as fully as you can what conversation occurred after Holcombe took possession of this box in regard to his doing so.—A. There was a great deal of confusion when it was found that a box had been substituted. We protested against Holcombe's taking the box, and myself and one of the inspectors caught hold of the sachel.

Q. Did any of the parties present go out of the room while Holcombe had possession of the box?—A. I went out, after leaving the sachel in charge of one of the inspectors, who had his hand upon it. Holcombe had his hand on it.

Q. What was the condition of things when you got back?—A. I was gone about two or three minutes. I heard confusion at the room door before I got back. When I returned to the room the sachel and proper box had both been carried off by Murray.

Q. If these boxes were changed it was done in your absence, was it not?—A. To that extent, I suppose that it was.

Q. Did you actually witness the changing of one box for the other?—A. I witnessed the box being taken by Holcombe from the table, and know that the one he returned to the table was not the one we had in use all day.

Q. Did you see Holcombe take any box at all out of that sachel and place it upon that table?—A. I did not, but he said in my presence that he put it on the table.

Q. To which box did he refer?—To the box that was substituted for the right one.

Q. What has become of that box?—A. We forwarded it to the sheriff by the returning officer, Ed. Smith.

Q. Did you make out any returns in accordance with its contents?—A. We wrote a certificate that it was not the proper box, and forwarded it with the box, so that it might not be counted.

Q. Did you ever see or hear anything of that box that Murray carried off?—A. No, sir.

Q. Were you ever a member of the legislature of Alabama; and, if so, in what year?—A. In 1874 I was a member.

Q. Were you not deprived of your seat by impeachment; and, if so, what were the charges against you?—A. I was not deprived of it by impeachment.

Q. Were you not unseated by a vote of the legislature for bribery?—A. I decline to answer any further questions on that subject, because I don't think it is right.

Q. State, as accurately as you can, the hour at which the polls were opened and closed at Pintlala beat that day.—A. The polls were announced opened at about half-past eight o'clock and closed at the hour designated by law—5 p. m.

Re-examined by the contestant:

Q. Did you make any return to Chief Supervisor Dimmick of the manner in which the election at your beat was a failure, and why it was you were unable to count the vote? Does your report, as made, contain a true statement of the votes cast at that election for James Q. Smith for Congress?

(Contestee objects to the question, upon the ground that it calls for new matter and secondary evidence.)

A. I made a return to Chief Supervisor Dimmick of the manner in which the election was a failure, and why we were unable to count the vote. To the best of my knowledge and belief, my report contains a true statement of the votes cast for James Q. Smith for Congress.

W. D. GASKIN.

Statement of inspectors.

Beat No. 17. Pintlala, Lowndes Co., Ala., Nov. 3d, '80.

The inspectors of the above-named beat will swear to the following statement, to wit:

That they saw Col. E. P. Holcomb in possession of a satchel containing a cigar-box prior to the time that the said Holcomb took charge of the ballot-box, against the protest of the inspectors; and that Gaskin ordered the aforesaid Holcomb not to put hands on the box, when he, in reply to Gaskin, said the the said Gaskin has nothing to do with the box containing the votes or anything else; that as U. S. supervisor could give no orders nor handle any paper belonging to the election; but that he, G., could only stand, look on, and report how the election was held, and all that was done irregular; and that while the said H. was saying this to G., and asserting his rights as an officer of the election, notwithstanding all that G. had said to him against taking the box from the table on which it was, and had been during the election, the said H. seized the box and took it from the table and put it into a satchel which was brought into the room where the voting was carried on, and known as his private property. The box referred to above was the box in which ballots was voted by the people of the precinct was deposited. At least three hundred and fifty-four had been polled up to about ten minutes of five o'clock, when everybody desiring to vote had voted; and there was no one at the polls who had not voted, and Col. H. put the box in the satchel above mentioned. The satchel was of a brown linen color, containing a petition in the middle; and on one side was the box supposed to be conceal, and on the other side, which appeared to empty, he put the box taking from the table, and when he had done this Gaskin first took hold of the satchel himself, and finding afterwards that he was compelled to go to himself a few minutes called Robert Dandridge, and made him take hold of the box in his absent, until he could return, and as soon as G. went out to the door, he called the marshal, Wesley Nolls, and place him at the door of the election room, and instructed said Nolls, as U. S. marshal not to allow anything to be brought of said room until he, G., could return. And a few minutes before Gaskin left the room, Tony Davis, one of the inspectors, ask leaf of absent or leave to step aside rather for two or three minutes. As there was no voting going on, and was not yet five o'clock, leave was granted and Davis went, and was back in a short time, and when Davis return this was the time that G. went out, and in short time after Davis' return to the room, the other inspectors all being in the room, and Mr. B. W. Mason, also U. S. supervisor, and Col. E. P. Holcomb, the alarm was made that the box containing the votes that was put in Col. H.' sachel was out of place and that another fraudulent box was inserted in its place on the table, from which the proper box had been taken.

ROBERT DANDRIDGE.
PHILIP S. SAMUEL.
his
TONEY + DAVIS.
mark.

(Indorsed:) AA. Election 1880. Lowndes County. Inspector's report at precinct No. 17. Pintlala beat. Rec'd & filed the 19 day of Nov., 1880. J. W. Dimmick, chief sup.

U. S. supervisor's return of votes cast for Representatives in Congress from the 4th Congressional district of the State of Alabama, at precinct or poll No. 17, commonly called Pintlala, in the county of Lowndes, on the 2d day of November, 1880.

| Names of candidates. | Number of votes as returned by inspectors. | Number of votes U. S. supervisor's return. |
|-------------------------------|--|--|
| James Q. Smith..... | | |
| Charles M. Shelley..... | | |
| William J. Stephens..... | | |
| Total Congressional vote..... | | |

Ballot-box stolen.

The ballots which were cast at this precinct were as follows, as nearly as I can ascertain:

For J. Q. Smith, 315; for C. M. Shelley, 35.

For full report, see supervisor's report marked AA.

I, the undersigned, supervisor of election, appointed by the circuit court of the United States, hereby certify that the foregoing return is true and correct.

Witness my hand at Pintlala, Ala., this 2d day of November, 1880.

W. D. GASKIN, *Supervisor.*

To J. W. DIMMICK,

Chief Supervisor of Elections, Montgomery, Ala.

In stating above that the managers at the Pintlala precinct made no return of the election, I intended to say that they made no such count of the votes or certificate thereof as is contemplated by law. They did make a certificate, which is in words and figures as follows, to wit: "We, the undersigned, managers of Pintlala beat, do hereby certify that there is three hundred and fifty-five tickets in the box, and the poll-list shows three hundred and fifty-four, and we do not believe that the box containing such tickets is the correct box."

TONEY DAVIS,
PHILLIP SAMUEL,
ROBERT DANDRIDGE,
Managers.

The foregoing is the only certificate made by said managers as far as I know or have been informed.

Nov. 3d, 1880.

B. W. MASON,
Supervisor of Elections for 17th Precinct (Pintlala), Lowndes Co., Ala.

This certificate is found with Mr. Dimmick, chief United States supervisor, and indeed there is no evidence which materially contradicts the facts above stated. Mr. Smith should have counted for him the 315 votes cast.

Your committee state that it would swell this report to undue proportions to give in detail the evidence showing the fraud, collusion, and bad faith of those managing the elections for the contestee, and must state as briefly as possible the true state of the votes at the other disputed precincts, as shown by the evidence.

Whitehall precinct, Lowndes County, Smith had 276.

Hopewell precinct, Lowndes County, Smith had 116.

Benton precinct, Lowndes County, Smith had 156.

In these precincts the Democratic inspectors failed to appear, except at Whitehall, and returns rejected because of informality, but should be counted for contestant. Prairie Bluff precinct, Wilcox County, Smith had 305 and Shelley 35; this vote rejected for the reason that the name of the precinct did not appear in the return, and yet the following is the return of the supervisor of that precinct:

U. S. supervisor's return of votes cast for Representatives in Congress from the fourth Congressional district of the State of Alabama, at precinct or poll No. 4, commonly called Prairie Bluff, in the county of Wilcox, Ala., on the 2d day of November, 1880.

| Names of candidates. | Number of votes as returned by inspectors. | Number of votes as returned by U. S. supervisor's return. |
|--------------------------------|--|--|
| James Q. Smith | 305 | ..... |
| Charles M. Shelley | 23 | ..... |
| Total Congressional vote | 328 | ..... |

Not counted. (See evidence.)

I, the undersigned, supervisor of election, appointed by the circuit court of the United States, hereby certify that the foregoing return is true and correct.

Witness my hand, at Prairie Bluff, Ala., this 2d day of November, 1880.

T. J. SYKES,
Supervisor.

Your committee cannot think that the Democratic supervisors rejected this through ignorance of the law, but in violation of the same, and these votes should be given to Mr. Smith, as the electors intended them.

NEWBURN PRECINCT, HALE COUNTY.

The following is the evidence of the United States supervisors of this precinct, and which is corroborated by other and competent evidence, and the evidence of the actual vote will be found as follows: M. House, pp. 300-305; exhibits, pp. 429-431; E. J. Saundar, pp. 305, 308; exhibits, pp. 318-321; Lawson Hill, pp. 308, 309; exhibits, 321, 322; Granville Thompson, pp. 312, 313; exhibits, 323.

MERRITT HOUSE, United States supervisor:

Q. Were you present all day of the election, and did you carefully scrutinize the manner of depositing the ballots and the counting of the same?—A. I was present all the day of the election, and I carefully scrutinized the manner of depositing the ballots and also the counting of the same.

Q. State fully and particularly all that was done and said after the polls were closed in reference to the counting of ballots by the inspectors, giving the name of each inspector or person who took any part or said anything about the counting of the ballots, and anything else that transpired in reference thereto on that day.—A. When the polls were closed, the inspectors, Mr. Wyley Croom, Noah Huggins, wanted to take the ballot-box from the room in which we had held the election into an office outside of the room and building where we held the election; to this I objected, and insisted upon counting the ballots there. To this Mr. Croom said he would be d——d if he didn't do it. By this time it had got dark inside the room, and I said, "If you will go in there I will take the box and carry it along." Mr. Huggins says, "You put that box down, by God; Mr. Croom is the man to carry that box." I then put the box down; Mr. Croom then took the box up, put the papers—poll-list—on top of the box; then we started from the front of the store to go out of the store at the back door, and before getting to the back door Mr. Croom and Mr. Huckleby, one of the clerks, went behind a hay pile. Robert Lee, the colored inspector, said, "What are you all going around there for? You know you can't get out there." Mr. Croom said, "Oh, that is so; and they then turned and came back and got to the right side of this hay, where there was a door, and we could see, and Mr. Johnny Huckleby had the box. Robert Lee, the colored inspector, says, "What are you doing with the box, Mr. Huckleby?" Mr. Huckleby said Merritt saw him pick the box up off the counter: witness is Merritt. I said, "No, sir; it was not you picked it up; it was Mr. Croom." To this there was no reply, and they then walked out into the next room. When we got into the next room I said, "I am not satisfied about this box." Mr. Huckleby tried to draw my attention on to another subject. Then we commenced counting, and counted a good many tickets. I then discovered that this was the wrong box. I had marked the box in the polling room with a straight mark, with my knife, under the lock, and Bob Lee made a mark across my mark, and the one we had in there had no mark on it. I then got up and said, "There are illegal tickets here; I thought something would be wrong, was my reason for not wanting to come in here." I then went out doors, and tried to go back in the room where we had been all day. I was told that the key was lost, and they wanted to know what I wanted to go in there for; I told them I wanted to go in there to get the right box; that the one they had counting the tickets out of was an illegal box. Mr. Croom and Lewis Turpin let me go into the store-room in the front, and then I asked to go back to the hay pile, and they would not let me go, saying that that was his private room; they then made me come out of the store. Noah Huggins, one of the inspectors, then threatened to shoot me, and I said, "Gentlemen, if I cannot count the right box, I will go home;" and then I left. This was about nine o'clock p. m.

None of these votes counted for Smith, although honestly cast for him, and he should have them counted for him, and your committee so find, as they are convinced that not to do so would be an outrage upon

the rights of both the electors and contestant. We find the following votes cast for Mr. Smith at the several precincts named below, and fraudulently rejected by the precinct inspectors:

| | |
|--|-------|
| Walthal's precinct, Perry County..... | 186 |
| Scott's precinct, Perry County..... | 274 |
| Cunningham's precinct, Perry County..... | 180 |
| Hamburg precinct, Perry County..... | 250 |
| Marion precinct, Perry County..... | 238 |
| | — |
| | 1,128 |

These votes should be given to Mr. Smith, as the evidence, in the opinion of your committee, abundantly shows.

Your committee further find that the United States supervisors' return of votes cast for Representative in Congress from the fourth district of the State of Alabama, election held on the 2d day of November, 1880, composed of Dallas, Lowndes, Perry, Hale, and Wilcox Counties, was as follows, to wit:

RECAPITULATION.

| Counties. | Votes cast for Shelley. | Votes cast for Smith. |
|---------------|-------------------------------|-----------------------------|
| Dallas | 1,544 | 3,178 |
| Lowndes | 1,514 | 2,354 |
| Perry..... | 1,316 | 2,507 |
| Hale..... | 1,222 | 1,034 |
| Wilcox | 1,185 | 1,785 |
| Total | 6,781 | 10,878 |

Smith received 4,097 votes majority over Shelley, according to the returns made by the United States supervisors, as shown above.

Your committee, however, aside from this, find from the evidence that the statement of the true vote is as follows:

| | |
|---|--------|
| Contestant is returned as having received at said election..... | 6,650 |
| To which add from Dallas County, as hereinbefore set out..... | 2,158 |
| From Lowndes County, as stated..... | 868 |
| From Wilcox County, as stated..... | 305 |
| From Hale County, as stated..... | 398 |
| From Perry County, as stated..... | 1,128 |
| Total | 11,507 |

The contestee is returned as having received a total vote of (see Record, page 170).....

9,301

Add ballots cast for contestee and thrown out by the board of county supervisors, viz:

| | |
|--|-------|
| Prairie Bluff precinct, Wilcox County..... | 24 |
| Cahaba precinct, Dallas County..... | 11 |
| Fine Flat precinct, Dallas County..... | 25 |
| Mitchell's precinct, Dallas County..... | 1 |
| River precinct, Dallas County..... | 1 |
| Martin's precinct, Dallas County..... | 16 |
| Pintlala precinct, Lowndes County..... | 40 |
| White Hall precinct, Lowndes County..... | 14 |
| Hopewell precinct, Lowndes County..... | 17 |
| Newbern precinct, Hale County..... | 103 |
| | — |
| | 252 |
| Contestee's assumed vote..... | 9,553 |

Deduct from the above assumed vote of contestee the following votes fraudulently counted for contestee by the precinct inspectors, viz:

| | |
|---|-----|
| Walthal's precinct, Perry County | 181 |
| Cunningham's precinct, Perry County | 170 |
| Scott's precinct, Perry County | 190 |
| Hamburg precinct, Perry County | 167 |
| Marion precinct, Perry County | 141 |
| | 849 |

| | |
|------------------------|-------|
| Contestee's vote | 8,704 |
|------------------------|-------|

In the above precincts of Perry County the ballot-boxes were stuffed and the vote changed.

| | |
|-----------------------------------|--------|
| Contestant's vote, as shown | 11,507 |
| Contestee's vote, as shown | 8,704 |

| | |
|-----------------------------|-------|
| Contestant's majority | 2,803 |
|-----------------------------|-------|

Your committee further find that on the morning of the election the Democratic inspectors of Burnsville precinct, in Dallas County, did not open the polls and failed to appear. The citizens being mostly colored men, came before 9 o'clock a. m., to the number of over or about 400 voters, for the purpose of voting, but were discouraged by being informed that an election in the absence of inspectors would be illegal. A delegation of them went several miles to seek legal advice, and after doing so came back and was about to open the polls, and was then informed that they could not do so, because the hour of 9 o'clock a. m. had passed, and no election could be held or polls opened after that time; no poll-boxes were furnished or blanks for returns. They then organized, and a list of the names of voters in the precinct was taken, and an expression of preference from each as to his choice for Representative in Congress, and that 300 registered and expressed their choice as being Mr. Smith, while not one expressed a willingness to vote for Mr. Shelley. But as no polls were in fact opened, and no ballots cast, your committee, while they believe these electors have been deprived of their votes fraudulently, cannot allow them.

In conclusion, your committee state that they have but little pleasure in reporting the facts which the evidence in this case discloses, as such acts must be and remain a blot upon our boasted civilization; and a more deliberate, wanton, barefaced, and cruel fraud was never practiced upon a people guaranteed by the laws of our common country the right to cast a free ballot and have it honestly counted. And while it is true that many of them, and, indeed, most of them, were colored men and uneducated men, yet it strikes your committee as being the acme of cruelty for those who have practiced these frauds and wrongs upon them to palliate the fraud or excuse themselves because of such ignorance, seemingly forgetting what all civilized people remember, that it was their own deliberate act that made them so, and by solemn enactment of State laws made it a felony to attempt the task of teaching them; but neither law nor common ordinary fairness would permit the conspirators to reap the rewards or benefits of their own wrong. The very ignorance they charge should be, and is, to every honest, humane man a strong and controlling reason why extraordinary efforts should be made to guard the rights of those dependent upon them; and if a community will not do so, the laws of a common country will.

And to that end your committee submit the following resolutions and ask their adoption:

Resolved, That Charles M. Shelley is not entitled to a seat in the Forty-seventh Congress, and was not elected thereto from the fourth Congressional district in the State of Alabama.

Resolved, That James Q. Smith was duly elected a member from the fourth Congressional district of the State of Alabama to a seat in the Forty-seventh Congress, and is entitled thereto.

VIEWS OF MR. RANNEY.

JAMES Q. SMITH, CONTESTANT, VS. CHARLES M. SHELLEY, CONTESTEE.—FORTY-SEVENTH CONGRESS.

AS TO MOTION OF CONTESTANT.

The contestant on the hearing of this case before the subcommittee moved to suppress and strike from the record the testimony taken by the contestee of J. S. Muchat, William H. Dillard, Simpson Jones, William B. Gilmer, Wilson Harris, M. A. Graves, F. M. Sullivan, and B. W. Mason, taken by Ben. De Lemos, and the testimony of Ben. De Lemos taken by H. W. Caffey, for the reasons set forth in contestant's statement (Record, page 217), and to the testimony of said witness taken by said De Lemos, why styles himself notary public, because he does not authenticate by a seal his official position (McCrary on Election Contests, page 336; Code of Alabama, sec. 1330, page 424). "For the authentication of his official acts, each notary public *must* provide a seal of office, which *must* present by its impression his name, office, State, and county for which he was appointed." And for a further reason the contestant moved as aforesaid, because neither the certificate nor the oath administered is according to law.

And it appearing that no sufficient or proper notice was served upon contestant, so he had no opportunity to be present and cross-examine the witnesses, as is shown by the deposition of contestant, which is not controverted—

It is my opinion that said motion might properly be granted for some of the reasons stated, and that all of said proof taken by contestee of said witnesses be stricken from the record in this case. But I do not deem it necessary to grant the said motion. I prefer rather, without passing upon all the questions involved, as they are, some of them, technical, to make all proper allowances for the evidence taken, in view of the fact that contestant had no opportunity to cross-examine the witnesses, and they were not cross-examined, in fact, because of the want of proper notice.

JAMES Q. SMITH, CONTESTANT, VS. CHARLES M. SHELLEY, CONTESTEE.—FORTY-SEVENTH CONGRESS.

Contested election from the fourth Congressional district of Alabama.
Election held on the 2d day of November, A. D. 1880.

The Committee on Elections, to whom was referred the contested-election case of James Q. Smith against Charles M. Shelley, from the fourth Congressional district of Alabama, election held on the 2d day of November, A. D. 1880, having had the same under consideration, beg leave to submit the following report:

From the record testimony in the case, it appears the counties of

Dallas, Lowndes, Hale, Wilcox, and Perry make up the fourth Congressional district of Alabama; that the electors of each of said counties are chiefly of the African race, and, as would seem, cast Republican ballots for their party candidates to the extent of from 95 to 97½ per cent. of their vote when permitted to do so; that the electors in each of said counties are largely Republican in politics, and in the district, the five counties combined, have a joint Republican majority of at least 15,000 votes; that the white electors in each county of the district chiefly cast Democratic ballots for their party candidates. (Record, Rapier's ev., pp. 151-155; McDuffie, 211-216; Record, pp. 169, 170.)

The evidence given upon some of the general facts stated above is a matter of opinion, it is true, but the same comes from men apparently well able to judge, and is not controverted by other evidence.

It has been stated, and is notorious as matter of history, as claimed by contestant, that when the Democratic party came into power in 1874 the work of reorganizing the Congressional districts was speedily commenced, the object being to make all the districts Democratic. After the most laborious and careful investigation of this matter, it was found impossible to do so, and it was then considered best to put into one district all the large Republican counties adjoining each other, to be called the fourth Congressional district of Alabama. The acknowledged Republican majority in Dallas County was, at the State election of 1874, 4,957; in Hale County, 2,304; in Lowndes County, 2,953; in Wilcox County, 2,126; in Perry County, 2,606; making a clear Republican majority in the district of 14,946 votes. At the Presidential election in 1876 Hayes, Republican, received a majority over Tilden, Democrat, of 9,446 votes; and in the same year, in the State election, Woodruff, Independent, receiving Republican support, had a majority over Houston, Democrat, for governor, of 9,115 votes. (Record, p. 170.)

In the Congressional election of the same year Rapier, running as the regular Republican nominee, and Haralson, running as a bolting candidate (both persons of the negro race), the joint majority over Shelley, Democrat, was 6,256 votes. The census returns of 1880 show that there are now in the counties composing the district 135,881 persons of the negro race, and 32,855 white persons, disclosing a very large increase of the negro race, so that on a calculation it may be assumed that there is, in fact, now a majority of 18,000 negro Republican voters over white Democratic voters in the district. (Record, pp. 169, 170, 178.)

Under the election law of Alabama it is made the duty of the judge of the probate court, the clerk of the circuit court, and the sheriff of each county, thirty days previous to any election, to designate three inspectors to hold an election in each voting precinct, *two of which shall be members of opposing political parties*. The sheriff is made county returning officer, and it is made his duty to send to each of the precincts in the county ballot-boxes for the purposes of the election, and he is the peace-officer who is to be present, in person or by deputy, at each election precinct. (Ala. Code, § 258, art. 2; sec. 259.)

It appears that the judge of the probate court, the clerk of the circuit court, and the sheriff, whose duty it was to appoint precinct inspectors of election, in all of said counties, were Democrats in politics and supporters of the contestee; and the same officers are by law made the county supervising board to canvass the returns made by the precinct inspectors of election appointed by themselves.

DALLAS COUNTY.

It appears that previous to the election the officers whose duty it was to appoint precinct inspectors in Dallas County, one of whom should be of the opposing political party, were notified in writing and requested to obey the election law of Alabama in this respect, and give an opportunity to suggest some suitable men to act for the Republican party, but they refused to do so. One of them (the sheriff) stated "that if he received forty such notices he would pay no attention to them." (Depositions of Roundtree and Judge Wood.)

It appears that in *seven* precincts of Dallas County, to wit, Pine Flat, River, Mitchell's, Chillatchie, Cahaba, Martin's, and Lexington, about which testimony has been taken, and for each of them three inspectors were appointed, two of whom were white Democrats and one a negro, who was *supposed* to be a Republican on account of his color that of the two white Democratic inspectors for each of the *seven* precincts it appears that they were not present on the morning of the election to open the polls, and the white Democratic inspectors, appointed by county authority, failing to be present, the colored electors present, under the election statute of Alabama, opened the polls and held elections in said precincts; that the returns made of the result to the board of county supervisors in Cahaba, Pine Flat, Mitchell's, River, Lexington, and Martin's were not in statutory form, and were for informality rejected, and the vote not counted by the board of county supervisors, and that the sheriff, the returning officer, refused to receive the ballot-box from Chillatchie precinct because it was a cigar-box, and it was not before the supervising board. (Record, p. 133.)

It appears that no box was furnished as required by law. (Rec., p. 141.) The sheriff swears that he sent boxes. If he did the Democratic inspectors had them probably and did not produce them, as they did not act.

The returns being informal, irregular, and insufficient, and therefore defective, went for nothing, and the votes cast not being counted for the contestant or the contestee, and the ballot-box from Chillatchie not being received, evidence is resorted to to prove the actual vote, under the well recognized and settled rule stated by McCrary in his work on Contested Election Cases (sec. 302, page 268 and 9; Littlefield *vs.* Green (1 Chicago Legal News, 230); Brightley's Election Cases, 493; McKenzie *vs.* Braxton, Forty-second Congress; Giddings *vs.* Clark, Forty-second Congress. (See sec. 304, p. 270, and sec. 81., p. 104, McCrary on Contested Election Cases.) In Alabama, where this contested-election case arose, the supreme court of that State lay down the law of contested elections as follows:

It is the election that entitles the party to office, and if one is legally elected by receiving a majority of legal votes, his right is not impaired by any omission or negligence of the managers subsequent to the election. (State ex rel. Spence *vs.* The Judge of the Ninth Judicial Circuit, 13 Ala. Rep., 805.)

Nor will a mistake by the managers of the election in counting the votes and declaring the result vitiate the election. Such a mistake may and should be corrected; the person receiving the highest number of votes becomes entitled to the office. (State ex rel. Thomas *vs.* Judge of the Circuit Court, 9th Ala. Rep., 338.)

The returns from Pine Flat, River, Mitchell's, Cahaba, Martin's, and Lexington precincts of Dallas County being declared irregular and informal, as not coming up to statutory requirements, were not counted by the board of county supervisors for either candidate for Congress, and the ballot-box from Chillatchie precinct being refused by the sheriff was not before the board of county supervisors and was not counted by them; therefore, in such a case each candidate was required to prove the actual number of ballots cast for him. The contestant introduces proof

as to the number of ballots cast for him at each of the precincts of Pine Flat, River, Cahaba, Mitchell's, Chillatchie, Martin's, and Lexington; the contestee introduces no proof whatever to rebut the proof made by the contestant in this respect, nor does he show by any proof that he had any ballots cast for him for Congress, except from the evidence taken by contestant.

The proof does not show that the sheriff was present in person or by deputy at any of the *seven* precincts referred to, and it is shown that every white Democratic inspector appointed by the board of county supervisors failed to appear and open the polls and hold an election, and neither of the Democratic United States supervisors appointed by the United States circuit court, on the petition of ten Democratic citizens of the county, appeared at the said election precincts, except the Democratic United States supervisor at Pine Flat precinct, and his report to the chief supervisor of elections agreed with the report of the Republican United States supervisor.

It appears that the county board of supervisors of Dallas County, the largest Republican county in the district, appointed two intelligent Democrats, supporters of the contestee, and although requested in writing refused to appoint one intelligent member of the opposing political party, but did appoint one ignorant negro supposed to be a Republican on account of his color, to serve as precinct inspectors, and that the two white inspectors did not appear at the election place to open polls and hold an election, leaving the ignorant negro inspector to organize a board of inspectors from the negro electors present; and from the fact that the polls were opened and elections were held by the uneducated negro qualified electors of said precincts, and from the further fact that the statement of the vote cast, and the returns thereof, were held to be irregular, informal, and insufficient, and therefore not considered nor counted by the board of supervisors, because they were not technically in accordance with the election law, we are reluctantly impelled to the conclusion, particularly as each of said precincts is largely Republican in politics, that there must have existed a well planned and previously arranged conspiracy on the part of the Democratic election managers, by the absence of the Democratic precinct inspectors at the election place on the day of election, to have no polls opened, and if opened under the election statute by the uneducated negro electors, then they hoped the statutory statement of the election returned to the board of supervisors would be defective in form, and in either event there would be a pretext or sufficient excuse for not considering the vote; but such a scheme, if formed, cannot be allowed to be successful, as the committee have no difficulty on the proof in finding that an election was held according to law and what the vote actually was. (Code of Alabama, section 262.)

I therefore find, as matter of fact, that the ballots legally cast, but not counted for contestant and contestee in the said seven precincts of Dallas County, and which should, as matter of law, be counted for them in this contest, are:

| | For contestant. | For contestee. |
|---------------------------|-----------------|----------------|
| Pine Flat precinct..... | 280 | 25 |
| River precinct..... | 314 | 1 |
| Cahaba precinct..... | 376 | 11 |
| Mitchell's precinct..... | 360 | 1 |
| Chillatchie precinct..... | 124 | 0 |
| Martin's precinct..... | 384 | 16 |
| Lexington precinct..... | 320 | 0 |
| Total | 2,158 | 54 |

RECAPITULATION.

| | | |
|----------------------|-------|--------|
| For contestant ..... | ..... | 2, 158 |
| For contestee..... | ..... | 54 |

LOWNDES COUNTY.

It appears from the proof in reference to the precincts of Pintlala, Whitehall, Hopewell, and Benton, in Lowndes County, that the Democratic inspectors, appointed by the board of county supervisors, failed to appear and hold the elections, except at Whitehall precinct. At Hopewell the ballots cast for each candidate were not counted by the board of county supervisors. The contestant proves that he had cast for him 116 ballots, and that contestee had cast for him 17 ballots. The returns of this precinct were excluded for irregularity and informality, and come under the ruling heretofore made, that ballots legally cast should be counted as cast notwithstanding the action of the precinct inspectors.

(See record. Testimony of Willis Knight, pp. 195-198; Allen Hinson, pp. 198, 199; Exhibit, p. 334; J. V. McDuffie, pp. 211-216. Contestee's witnesses: S. Jones, pp. 546, 547; M. A. Graves, pp. 549-551; F. M. Sullivan, p. 551.)

The evidence as to this precinct is conflicting. Only two inspectors acted, as no others would serve. The Democratic inspectors would not serve, although present. Their evidence is to be taken with allowance.

It appears that at the election in Benton, in the same county, the appointed Democratic inspectors present on the morning of the election refused to open the polls and hold an election, stating it was too late to open the polls. The hour of nine o'clock having arrived, the Republican colored electors present, seeing that no election was to be held, organized, under the election law of Alabama, and held the election, which resulted in having cast for the contestant 156 ballots. The appointed Democratic inspectors, who said it was too late, and said there would be "no election that day for Garfield or Hancock," opened a second polling place and held an election, where 51 ballots were cast for contestee. The box from this second polling place was received by the county returning officer (the sheriff), and the box containing the 156 ballots cast for contestant was rejected by the sheriff and not counted by the board of county supervisors. The contents of the ballot-box are exhibited in the record. We hold, as matter of law, that the sheriff should have received the ballot-box and permitted it to go before the board of county supervisors; and further, as matter of law, that after the first election polls were opened the second polls were not authorized, and should not be recognized, and therefore the 156 ballots cast at the first polling place should be counted for contestant. The United States supervisors cannot be present where precincts are multiplied; it would be a dangerous power, and may be used for the purposes of corruption. (McCrary on Election Contests, sec. 108, pp. 120, 121; Sloan vs. Rawles, Forty-second Congress; see record, testimony of R. S. Abbott, pp. 185-188; Exhibit, pp. 329, 330; A. J. Edwards, pp. 188-193; Exhibit, p. 174; George Torrance, pp. 193-195; J. V. McDuffie, pp. 211-216; contestee's witness, M. A. Graves, pp. 549, 550; supervisor's return, 329.)

At the election in Whitehall precinct, in the county of Lowndes, the uncontradicted testimony shows that there were cast for contestant 276 ballots, and for the contestee 14 ballots, and it also appears that the pre-

cinct returning officer took the ballot-box used for the purposes of the election to the sheriff, the county returning officer, who, being informed of the vote cast for each candidate at Whitehall precinct election, refused to receive or receipt for the box, because it was a pipe-box that had been used for the purposes of the election. This county returning officer is a Democrat in politics, and an ardent supporter of the contestee, and after refusing to receive or receipt for the box he desired the precinct returning officer to put the box on a desk in his office, which was done. It is in proof that the ballot-box, when delivered to the precinct returning officer, had in it, properly secured, the whole number of ballots cast, 276 of which were cast for contestant and 14 were cast for contestee, and the list of voters who cast ballots at the election, which is exhibited in the record. When this ballot-box was before the board of county supervisors its appearance showed that it had been opened from the bottom, and by this means stuffed with fraudulent ballots instead of the true ballots cast by the electors. All of contestant's ballots found in the box when opened, to the number of 54, had a hole in the middle of each as if having been strung upon a string, and were folded, and looked as if they had been cast, and the other ballots found in the box looked as if they had not been cast, and in the shape they were could not have been cast at the election by being put through the hole in the lid of the box; the ballots were not counted by the board of county supervisors.

We can reach no other conclusion from the facts and circumstances than that the ballot-box was fraudulently tampered with whilst in the sheriff's office, and before it was brought before the board of county supervisors. We hold that the pipe-box used for the purposes of the election was not objectionable, and should have been received for, and, as a matter of law, we hold that the contestant should have counted for him the 276 ballots cast, and that the contestee should have counted the 14 ballots cast for him. (See record. Testimony of Philip White, pp. 176-178; Exhibit, p. 346; Robert Payne, pp. 179-181; Major White, pp. 181-185; Willis Brady, pp. 199, 200; J. V. McDuffie, pp. 211-216; contestee's witness, M. A. Graves, pp. 549, 550.)

At the election held at Pintlala precinct, in the county of Lowndes, it appears from the proof that after the electors had cast their ballots the closing hour had arrived, and the counting of the ballots cast should have commenced. A voter of the precinct appointed to act as one of the three inspectors previous to the election, an active supporter of the contestee, but who refused to act on the morning of the election, entered the polling room, having with him a sachel with a partition in the middle, in one side of which he had a cigar-box stuffed with false ballots, and took from the table the ballot-box, into which the voters during the election had cast their ballots, and placed it in the empty side of the sachel. In a few minutes a confederate, in a buggy, called him. He took from the sachel the fraudulent stuffed box and placed it upon the table, closed the sachel containing the true ballot-box and ballots, and jumped into the buggy and left with his confederate. The false ballot-box reached the board of county supervisors certified to by the election officers as a false and not the true box. From the proof made it is shown that at the time of the robbery of the true box there were in it 320 ballots cast for contestant, and 40 ballots cast for contestee.

We hold that all the facts and circumstances show a bold device and conspiracy to destroy the result of the election at Pintlala precinct, and, as a matter of law, that the true vote for contestant and contestee should be counted for each. (*Chapman vs. Ferguson*, 1 Bartlett, 267.)

| | | |
|------------------|-------|-----|
| Contestant ..... | ..... | 320 |
| Contestee ..... | ..... | 40 |

(See record. Testimony of Samuel M. Duncan, pp. 200-203; W. D. Gaskin, pp. 203-207; Exhibit, pp. 344, 345; Samuel Lee, pp. 207, 208; J. V. McDuffie, pp. 211-216; contestee's witness, B. W. Mason, pp. 554, 555.)

Contestant, by the proof, shows the true vote cast for himself and the contestee at the election held in Hopewell, Benton, Whitehall, and Pintlala precincts, in the county of Lowndes, which should be counted for each, as follows:

| | For contestant. | For contestee. |
|-------------------------|-----------------|----------------|
| Hopewell precinct | 116 | 17 |
| Benton | 156 | 0 |
| Whitehall | 276 | 14 |
| Pintlala | 320 | 40 |
| Total | <hr/> 868 | <hr/> 71 |

RECAPITULATION.

| | | |
|----------------------|-------|-----|
| For contestant ..... | ..... | 858 |
| For contestee ..... | ..... | 71 |

HALE COUNTY.

There seems to be no controversy about the election in Hale County, except as to Newbern precinct, and as to that election contestant's claim is that it is shown by the proof that after the balloting was over on the day of the election, the box into which the electors cast their ballots was changed for a fraudulent, false, and stuffed ballot-box. One of the inspectors, a Democrat and supporter of contestee, was caught in the very act. The stuffed box was sent to the board of county supervisors, who refused to count the vote for either candidate for Congress, and the box was last seen before the United States grand jury at Mobile. If this claim is sustained, the fraudulent conduct of the Democratic election inspectors appearing, and not having attempted to make a statement of the true vote cast, or the intended fraudulent count in favor of the contestee, we hold the true issue in an election contest in Congress or in the courts to be—

1st. Was there an election held.

2d. Who received a majority of the legal votes cast.

The proof shows that there was an election held, and that the contestant had cast for him 398 ballots, and that the contestee had cast for him 103 ballots. The fraudulent conduct of election officers cannot deprive the injured party of the votes legally cast for him by the electors, for it is the election that entitles the party to office, and that right is not impaired by the conduct of election officers subsequent to the election. (13 Alabama Reps., 805; Chapman vs. Ferguson, 1 Bartlett, 267.)

I am of the opinion that the vote cast at Newbern, and not counted for either candidate, should be counted on the proof, as follows:

| | | |
|----------------------|-------|-----|
| For contestant ..... | ..... | 398 |
| For contestee ..... | ..... | 103 |

(For proof see record. Testimony of Merritt House, pp. 300-305; Exhibits, pp. 429-431; E. J. Lavender, pp. 305-308; Exhibits, pp. 318-321; Lawson Hill, pp. 308, 309; Exhibits, pp. 321, 322; Granville Thompson, pp. 312, 313; Exhibit, p. 323; J. Huggins, p. 432. Con-

testee's witness, Sam. Bennett, pp. 485, 486; Bob Haywood, pp. 486, 487; M. S. Herran, pp. 488, 489; F. L. Huggins, p. 489; Dennis Starky, p. 489.)

PERRY COUNTY.

The Democratic inspectors, appointed by the board of county supervisors, opened the polls and held elections in the precincts of Marion No. 1, Cunningham's, Walthall's, Scott's, and Pope's, in Perry County. The proof shows that the board of county supervisors refused to obey the election law of the State, at least in spirit, as to appointing one of the three inspectors from the opposing political party (Record, p. 254), and that at Walthall's and Cunningham's precincts the United States supervisors were refused admittance by the inspectors to the polling-room, and they were unable to be present to witness the casting and the counting of the ballots, and the manner of conducting the election provided for by the United States election law, so that each candidate should have the benefit of every vote for him cast.

The election in Marion precinct No. 1, in the county of Perry, was held by the inspectors appointed previous to the election, two of whom were supporters of the contestee, and the proof, as contestant claims, shows that at that election precinct contestant had cast for him 327 ballots, and the contestee had cast for him about 222 ballots, yet the election inspectors return contestant as having cast for him only 89 ballots, and the contestee as having cast for him 363 ballots, showing a false count against the contestant of 238 ballots, and a false count in favor of the contestee of 141 ballots. Outside of the false count and false return made by the inspectors at this precinct, the evidence tends to show such conduct on the part of the inspectors during the election that no credit can be given to their return ; it proves nothing, and other evidence must be resorted to to show the true number of ballots cast for each candidate. (McCravy on Election Contests, p. 234.) The uncontradicted false count of ballots cast for each candidate, and the uncontradicted evidence showing the conduct of the election officers at Marion precinct No. 1, bring us to the conclusion that the ballots cast and proven for each candidate must be counted for each, as shown by the proof, and not by the returns. Contestant is entitled to and should receive credit for 327 ballots, less the 89 ballots counted for him, and from the contestee's vote should be deducted 141 ballots.

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|--|-----|
| False count against contestant..... | 238 |
| False count in favor of contestee..... | 141 |

(See record. Testimony of J. P. Billingsley, pp. 253, 254; James F. Bailey, pp. 259-263; Exhibit, p. 288; S. B. Price, pp. 263-269; Exhibits, p. 286, pp. 401, 402; Ed. Spaulding, pp. 269-274; Matt. P. Boyd, pp. 274-278; Exhibit, p. 288.)

At Cunningham's precinct in the county of Perry, after the United States supervisor was rejected, there was no opportunity offered to scrutinize the manner of conducting the election inside the polling-room, but it is claimed to be shown by proof, uncontradicted, that there were cast for contestant 315 ballots, and for the contestee 40 ballots ; yet the Democratic inspectors in the return made of the result count the contestee as having received 210 ballots, and the contestant as having received 135 ballots ; showing a false count against contestant of 180 votes, and a false count in favor of the contestee of 170 votes. The proof, uncontradicted, shows, as is claimed, a fraudulent and false count of the bal-

lots cast ; the returns are attacked for fraud and each candidate must prove his vote; the contestant has proved the actual vote cast for himself and the contestee, and they should be counted as cast ; the rule of law in such a case being to set aside the returns without reference to what appears on their face (*Ferguson vs. Chapman*, 1 Bartlett, 267 ; McCrary on Election Contests, pp. 309, 310). We hold further that the United States supervisor at an election poll is made a part of the State election machinery and that the State inspectors had no authority to refuse admittance to the United States supervisor, and their refusal was improper and not warranted in law.

| | |
|--|-----|
| False count against contestant..... | 180 |
| False count in favor of contestee..... | 170 |

(See record for evidence of above. Testimony of Henry Wells, pp. 279-281 ; Nix Stevens, pp. 281-285 ; Beverly Smith, pp. 298-300 ; William Jenkins, p. 387 ; J. P. Billingsley, pp. 253, 254.)

The Democratic inspectors at Walthall's precinct, in the county of Perry, refused, as at Cunningham's, to permit the United States supervisor to enter the polling-room, as provided by the election law of the United States, and therefore he was unable to scrutinize the manner of conducting the election, or to witness the count of the ballots cast for each candidate, so that each candidate for Congress should have the benefit of every ballot for him cast. The rejection of an United States supervisor, commissioned to be present, was not authorized by law. The proof shows that contestant had cast for him at Walthall's precinct 336 ballots, and for the contestee 34 ballots were cast ; the inspectors return as the vote for contestant 150 ballots, and for the contestee they return 215 ballots, showing a fraudulent count against contestant of 186 ballots, and a fraudulent count in favor of contestee of 181 ballots. The statement of the inspectors as to the ballots cast and counted for each must be set aside, and then it is the duty of Congress, without reference to the face of returns, to ascertain for whom the ballots were actually cast at Walthall's precinct (McCrary on Election Contests, pp. 309, 310 ; Washburn *vs.* Voorhies, 2 Bartlett, 54).

We hold as matter of law, from all the facts, that the vote cast should be counted for each candidate as cast, notwithstanding the false return made by the precinct inspectors.

| | |
|--|-----|
| False count against contestant..... | 186 |
| False count in favor of contestee..... | 181 |

(See record for evidence of above testimony of William Q. Smith, pp. 168, 169 ; J. P. Billingsley, pp. 253, 254 ; Latch Evans, pp. 309-311 ; Exhibit, pp. 323, 324 ; Lee Andrews, pp. 311, 312 ; E. B. Jones, pp. 384, 385.)

At Hamburg precinct, in the county of Perry, an offer to bribe the United States supervisor appears to have been made by one of the election officers, and this failing, a fraudulent, false, and stuffed box was substituted for the ballot-box into which the electors had cast their ballots, and a return was made by the inspectors to correspond with the substituted box.

The proof shows the number of ballots cast for each candidate to be 338 ballots for the contestant and 40 ballots for the contestee. The false count from the substituted box, as made by the precinct inspectors' consisted of making it appear that there were cast for the contestee 207 ballots, and for the contestant 88 ballots.

The returns being set aside for fraud, the election stands, and each candidate is left to the proof of the votes cast for him (*Washburn vs.*

Voorhies, 2 Bartlett, 54; Reed *vs.* Julian, 2 Bartlett, 882; Norris *vs.* Hundley, Forty-second Congress; McCrary on Elections, page 312).

To the proof made by contestant no counter-proof is introduced, and we hold the true vote cast at Hamburg should be counted as proved:

| | |
|--|-----|
| False count against contestant..... | 250 |
| False count in favor of contestee..... | 167 |

(See record for evidence of above. Testimony of B. F. Watson, pp. 104-111; 398, 399; Green Johnson, 144-147; J. F. Harris, pp. 254-259; Exhibit, p. 288; J. P. Billingsley, pp. 253, 254.)

At Scott's precinct, in the county of Perry, the United States supervisor swears that one of the State inspectors gave him \$35 as a consideration for changing ballots cast for contestant, by striking out contestant's name on the ballots and writing thereon contestee's name, which was done. The proof taken as to the election at Scott's precinct shows that contestant had cast for him 470 ballots, and that the contestee had cast for him 37 ballots, but when the precinct inspectors made their return contestant is credited with only 196 votes, whilst the contestee had counted for him 227 votes, showing a false count against contestant of 274 votes, and a false count in favor of the contestee of 190 votes.

We are of the opinion that the votes should be counted as cast for each candidate.

| | |
|--|-----|
| False count against contestant..... | 274 |
| False count in favor of contestee..... | 190 |

(See record of evidence of above. Testimony of Walter Lowry, pp. 155-164, 165, 166, 388-391; J. P. Billingsley, pp. 253, 254; Lazarus Avery, pp. 292-296; William Henderson, pp. 296-298; Exhibit, pp. 322, 323; contestee's witnesses, C. W. Tulpin, pp. 481, 482; J. C. Lee, pp. 482, 483; L. N. Driver, pp. 483, 484; E. Evans, p. 484; C. Schonberg, 485; R. Perryman, p. 485.)

At the election in Pope's precinct, in the county of Perry, contestant shows, by the proof (uncontradicted), that there were cast for him 300 ballots, and for the contestee 30 ballots; that after the election was over and the polls closed, and about the time the counting of the ballots cast should have commenced, one of the three inspectors said he was sick, left the polling room and returned no more that day; the other inspectors, Democrats in politics and supporters of the contestee, refused to count the ballots for either candidate in the absence of the sick inspector, and forwarded the box and ballots uncounted to the board of county supervisors, who were not, under the election law of Alabama, authorized to count the ballots, and neither candidate had the benefit of the ballots cast for him. Upon the facts, as matter of law, we hold that the two inspectors might have properly counted the ballots and have made a return of the result to the board of county supervisors in the absence of the sick inspector, but as this was not done, and as each candidate is by law entitled to every ballot for him cast, notwithstanding the omission of the precinct inspectors to count the ballots, it becomes the duty of the House of Representatives to ascertain from the evidence the true state of the vote, and the House cannot be estopped from considering the effect of the proof presented. (Norris *vs.* Hundley, Forty-second Congress; McCrary on Election Contests, 312; Ex parte Ellyson, 20 Grat. Va., 10.)

Under the proof contestant is entitled to have counted 300 votes, and the contestee to have counted 30 votes, being the number of ballots cast for each candidate at Pope's. (See record for proof of above. Tes-

timony of agreement, p. 285; S. T. Smith, pp. 314-316; Exhibit, p. 383; Henry Robinson, pp. 316, 317; Lindsey McDaniel, pp. 317, 318; S. S. Pickering, p. 384; J. P. Billingsley, pp. 253, 254.)

WILCOX COUNTY.

The proof in reference to the election at Prairie Bluff precinct, in the county of Wilcox, establishes the fact that there were actually cast for the contestant 305 ballots and for the contestee 23 ballots; the vote as polled was returned to the board of county supervisors, who declined to count the returns, because of an omission to insert the name of the precinct. On the cover of the box was written Prairie Bluff; the inspectors at this precinct, all white men, may have omitted to insert in the returns the name of the election precinct, but the proof supplies the omission, and establishes the fact that the box was from Prairie Bluff precinct, and shows the vote cast for each candidate as above stated. An exhibit of the name and number of each elector, the statement, and the ballots themselves, are in evidence. Under the facts, we hold that the evidence establishes the name of the precinct, the number of ballots cast, and for whom cast, and that they should be counted as cast for each candidate; no proof is offered to rebut the testimony produced on the part of contestant, and, as a matter of law, it is the election that entitles the party to office, and if a majority of legal votes are cast, any fraud, omission, or negligence of managers subsequent to the election cannot impair the party's right. (State ex rel. Spence, 13 Ala., 805; 1 Bartlett, 267; McCrary on Election Contests, sec. 554.)

| | | |
|------------------|-------|-----|
| Contestant ..... | ..... | 305 |
| Contestee ..... | ..... | 23 |

(See record. Testimony of Thomas J. Sykes, pp. 225-228; Exhibit, pp. 408, 409; Milton Brooks, pp. 228-230; B. M. Young, pp. 240-250; Exhibit, pp. 221, 222; E. D. Morrill, pp. 234-240; E. W. Locke, p. 405.)

I have not deemed it necessary to take into consideration the votes cast and not counted for contestant in the precincts of Bethel, Rose Bud, and Canton, in the county of Wilcox, where contestant claimed large majorities, rejected by the board of county supervisors on account of irregularity and omissions in the returns, nor have they considered Brooks's precinct, in the county of Lowndes, nor Camden, Snow Hill, and Pine Apple precincts, in the county of Wilcox, where contestant claimed large majorities, but where fraudulent returns were claimed to have been made by the precinct inspectors, nor Selma, Burnsville, and Valley Creek precincts, in the county of Dallas, where contestant claims that large numbers of Republican electors who would cast their ballots for him were afforded no opportunity to do so, the polls not having been opened, because, if considered, it would only add to the contestant's majority.

The tabulated statement herewith submitted, marked Exhibit A, shows the true vote cast for each candidate, and which should be counted for each of them in this contest, and it shows the majority of votes counted for the contestant, from which it appears that contestant was elected to a seat in the Forty-seventh Congress of the United States from the fourth Congressional district of Alabama:

EXHIBIT A.

| | |
|--|-------|
| The contestant is returned as having received a total vote of..... | 6,650 |
| Add ballots cast for contestant and thrown out by the board of county supervisors for informality in returns, &c.: | |
| Cahaba precinct, Dallas County | 376 |
| Pine Flat precinct, Dallas County | 280 |

| | |
|---|--------|
| Mitchell's precinct, Dallas County | 360 |
| River precinct, Dallas County | 314 |
| Lexington precinct, Dallas County | 320 |
| Martin's precinct, Dallas County | 384 |
| Chillatchie precinct, Dallas County | 124 |
| | 2, 158 |

| | |
|---|-----|
| Pintlala precinct, Lowndes County | 320 |
| White Hall precinct, Lowndes County | 276 |
| Hopewell precinct, Lowndes County | 116 |
| Benton precinct, Lowndes County | 156 |
| | 868 |
| Prairie Bluff precinct, Wilcox County | 305 |
| Pope's precinct, Perry County | 300 |
| Newbern precinct, Hale County | 398 |

Add ballots cast for contestant and fraudulently not counted for him by the precinct inspectors:

| | |
|---|--------|
| Walthall's precinct, Perry County | 186 |
| Cunningham's precinct, Perry County | 180 |
| Scott's precinct, Perry County | 274 |
| Hamburg precinct, Perry County | 250 |
| Marion precinct No. 1, Perry County | 238 |
| | 1, 128 |

| | |
|-------------------------|---------|
| Contestant's vote | 11, 807 |
| | 9, 301 |

The contestee is returned as having received a total vote of.....

Add ballots cast for contestee and thrown out by the board of county supervisors for informality in returns, &c.:

| | |
|---|-----|
| Pope's precinct, Perry County | 30 |
| Prairie Bluff precinct, Wilcox County | 24 |
| Cahaba precinct, Dallas County | 11 |
| Pine Flat precinct, Dallas County | 25 |
| Mitchell's precinct, Dallas County | 1 |
| River precinct, Dallas County | 1 |
| Martin's precinct, Dallas County | 16 |
| Pintlala precinct, Lowndes County | 40 |
| White Hall precinct, Lowndes County | 14 |
| Hopewell precinct, Lowndes County | 17 |
| Newbern precinct, Hale County | 103 |
| | 282 |

| | |
|--------------------------------|--------|
| Contestee's assumed vote | 9, 583 |
| | 9, 301 |

Deduct from the above assumed vote the following votes fraudulently counted for contestee by the precinct inspectors of election:

| | |
|---|-----|
| Walthall's precinct, Perry County | 181 |
| Cunningham's precinct, Perry County | 170 |
| Scott's precinct, Perry County | 190 |
| Hamburg precinct, Perry County | 167 |
| Marion precinct No. 1, Perry County | 141 |
| | 849 |

| | |
|------------------------|--------|
| Contestee's vote | 8, 734 |
| | 9, 301 |

Contestant's vote.....

11, 807

Contestee's vote.....

8, 734

| | |
|-----------------------------|--------|
| Contestant's majority | 3, 073 |
| | 9, 301 |

It was contended at the hearing that inasmuch as the statute of Alabama provides that the ballot-boxes with the ballots shall be kept by the inspectors for sixty days for use in case of a contest, contestant was bound, as his best evidence, to procure and put in evidence the ballots themselves when proving what the actual vote was. It is claimed, or appears, however, that in many, if not most, of the instances where

there was occasion to do this, if important, the boxes had not been kept as required by law, but had gone and been allowed to go into other hands. Whatever may be the rule otherwise, it certainly could not apply in such a case.

I find that several of the parties named in this report, and charged with frauds upon the election law in the election in question, were duly presented to the grand jury and indicted for the same. Some of the boxes in question had been taken and used before the grand jury in their investigations. There is no record of any conviction or acquittal of the parties indicted. The fact of indictments having been found is of course no competent evidence to impeach the parties as witnesses, and the committee have not so considered it.

Mr. Stephens seems to have been only nominally a candidate, and I am impressed with the belief that he got in fact less votes than were given for him in the official count, which was 1,693.

| County. | Charles M. Shelley. | James Q. Smith. | W. J. Stephens. |
|---------------|------------------------|--------------------|--------------------|
| Dallas..... | 1, 869 | 1, 333 | 92 |
| Hale | 1, 736 | 1, 043 | 442 |
| Lowndes | 1, 549 | 1, 621 | 477 |
| Perry | 2, 293 | 1, 389 | 682 |
| Wilcox..... | 1, 854 | 1, 264 | ..... |
| Total | 9, 301 | 6, 650 | 1, 693 |

Said Smith has died pending the contest.

I recommend the adoption of the following resolutions:

Resolved, That Charles M. Shelley was not elected as a Representative to the Forty-seventh Congress from the fourth Congressional district of Alabama, and is not entitled to retain the seat which he now occupies in the House.

Resolved, That James Q. Smith was duly elected as a Representative from the fourth Congressional district of Alabama to the Forty-seventh Congress, and having deceased, the seat is declared vacant.

Mr. BELTZHOOVER, from the Committee on Elections, submitted the following:

VIEWS OF THE MINORITY:

The fourth Congressional district of Alabama is composed of the counties of Dallas, Lowndes, Hale, Wilcox, and Perry.

It is true that the colored persons inhabiting this district are largely in excess of the whites, there being 135,181 of the negro race and 32,855 of the white race, but as to how the voting population is divided politically there is nothing in the evidence to show, unless assumptions of two persons may be considered as evidence.

One of these gives as his opinion that 97½ per cent. of the colored people were Republicans, and this opinion is based upon his experience in 1876, when he made a political canvass of the district. (Rapier's Ex. R., p. 154.) These persons are both active political partisans and members of contestant's party. It is, therefore, a mere opinion based upon an opinion, which has little or no solid foundation, to assume that there was

18,000 majority in this district. If there was such a majority of negro voters, it has been so divided among opposing candidates, so weakened by dissension and division, that its power at the polls has never been exerted. As evidence of this we find that the board of canvassers of each of the counties of the district, composed of the judge of probate, the sheriff, and clerk of the circuit court of each county, who are elected by the people, are members of the Democratic party. It is also true that since this Congressional district was formed there have never been less than two candidates for election as Representative in Congress claiming to be the candidates of the Republican party.

At the Presidential election of 1876 the Republican majority for Hayes in this district was only 9,115 (R., p. 170), and in the same year the joint majority for the two Republican candidates for Congress was only 6,256. There were two candidates for Congress claiming to be Republicans at the election of November, 1880. These were the contestant and William J. Stevens. Their names were submitted to a Congressional convention, which was unable to effect even a temporary organization because of the wranglings and dissensions among its members. Contestant's witness, Mr. J. T. Harris, gives it as his opinion that Mr. Stevens was the real candidate of the convention, though there was so much confusion and so little of order or propriety observed, that it was difficult to say that any one received the nomination (R., p. 258). There was no question of principle involved in this wrangling, and it was evidently the result of political trickery and the selfish wrangles of petty politicians. It is notorious that the scenes at this convention were but a repetition of what had uniformly occurred at previous Congressional conventions in that district; it will therefore not be surprising if we find, as we shall, that the ignorant, though honest, colored voter who adhered to the Republican party, being unable to decide who was entitled to his vote as the Republican candidate, became disgusted and indifferent and refused to take part in the conduct of elections or to attempt to vote.

The evidence shows that in the county of Dallas no election was conducted at one-half of the precincts in the county, and no attempt made by the Republicans to open the polls and conduct the election in those precincts, although there was not the slightest impediment or obstruction placed in the way of any three Republicans, in any of these precincts, who had sufficient interest in the election to act as inspectors and open the polls, and though a Republican United States supervisor had been appointed for each of the voting places in this county to advise and assist.

DALLAS COUNTY.

In this county testimony is taken in relation to seven precincts, to wit: Pine Flat, River, Mitchell's, Chillatchie, Martin, Lexington, and Cahaba. In relation to these precincts, it is complained, first, that the county board of supervisors appointed two Democrats and one ignorant negro as the board of inspectors for each voting place; and, secondly, that the Democratic inspectors who were appointed failed to be present and act on election day. As to the first complaint, the law requires that at least two of the inspectors at each voting place shall belong to different political parties, and it is not denied that to this extent the board of canvassers complied with the law in appointing the inspectors; but it is said that the Republican inspector thus appointed was always an ignorant man. While we fail to find testimony to sustain this allegation, yet we would ask, How was it possible for more intelligent rep-

representatives of the Republican party to be appointed? It will not be denied that in every precinct in Dallas County about which evidence has been taken all the officers of the election, to wit, the three inspectors, the two clerks, and the United States supervisor, were Republicans, chosen by Republicans, and yet we find that for not one voting precinct in the county did they make a return which was not so defective and irregular that the board of county canvassers were compelled by law to reject it. The "return" consists simply of a certified copy of the poll-list, and a statement of the vote received by each person, and for what office. Certainly it required no great degree of intelligence to make them properly, and yet, presumably from ignorance, not one of the six Republican officers at each voting place, nor all of them together, were able to make out a correct return. This being so, how could the board of supervisors of the county select an intelligent inspector to represent the Republicans in each precinct; and how can any one with justice say that their failing to do so is evidence of a conspiracy or combination to defraud the voter? As to the failure of the Democratic inspectors to act, it should be borne in mind that the laws of Alabama expressly provide that no person appointed as inspector shall be bound to act as such, or liable to any penalty for failure to act, until he shall have either performed some act as such inspector or taken the oath provided for inspectors; and is it a just cause of complaint, or for imputation of an evil intent on the part of the Democrats, because they failed to take part in the election and left the Republicans entirely free and untrammeled to conduct the polls? Could they ask more than this? It should be remembered that the evidence shows there was not the slightest attempt on the part of the Democrats in this county on election day to interfere with or impede the Republicans in their conduct of the election.

The law of Alabama is that should any of the inspectors appointed fail to appear and open the polls at the proper time, any one or more of them who may be present may complete the number from the by-standers, and if all of them fail to appear any three qualified electors may act as inspectors and open the polls. Now, if one party consents that the polls shall be entirely within the control and conduct of the other party, can it be gravely said that the latter has cause to complain? But there is a significant reason why Democrats appointed as inspectors should have a hesitancy to act. On pages 219 and 220 of the record will be found the names of persons who have acted as Democratic officers at elections at this and previous elections, and who have been indicted in United States courts for violation of the election law. As evidence of the facility with which these indictments have been found, and as an example of their character, we will ask attention to the indictments against Charles W. Turpin and John C. Lee, against whom an indictment was filed in the United States circuit court at Montgomery, charging them with a violation of the election laws. These men were Democratic inspectors at Scott's precinct, in Perry County. The occurrences at the election at that precinct are in evidence. But the only evidence of wrong-doing by the inspectors was contained in the testimony of one Walter Lowry, a Republican supervisor, who swears that Mr. Turpin gave him (Lowry) \$35 to permit the ballots which had been cast to be changed and altered; that he accepted and retained the bribe and permitted the unlawful acts to be committed, and indeed made himself a party to their commission. (R., p. 159.) It is on the testimony of this witness that these men were indicted and will be compelled to undergo a trial. This Lowry is, upon his own admission,

utterly unworthy of belief. Is it therefore surprising that Democrats are not eager to conduct elections for the benefit of Republicans when they may thus lay themselves liable to charges of this character?

As the returns from the precincts mentioned were rejected, and therefore not included in ascertaining the vote of the county, it was clearly competent for the contestant or contestee to establish the vote by evidence if at any of them a lawful election was held. The contestant attempts to establish his vote, and it is for us to ascertain whether or not he has succeeded.

As the sitting member held the seat by a title *prima facie* sufficient, it is incumbent on the contestant to affirmatively prove this title defective. This rule is well stated in the celebrated New Jersey case (1 Bartlett, pp. 24 and 26):

Before a member is admitted to a seat in the House something like the judgment of a court of competent jurisdiction has been pronounced on the right of each voter whose vote has been received, and in order to overturn the judgment it must have been ascertained affirmatively that the judgment was erroneous. * * * When the polls are closed and an election is made, the right of the party elected is complete; he is entitled to the returns, and when he is admitted there is no known principle by which he can be ejected, except upon the affirmative proof of the defect in his title. Every effort to oust him must accomplish it by proving a case. The difficulties in his path can form no possible reason why the committee should meet him half way. The rule of reason requires that he should fully make out his case even though it require proof of a negative, and such is also a rule of Parliament in analogous cases.

The burden of proof being upon the contestant, by what character of evidence should he be required to prove his case? The ordinary rules of evidence must of course apply to election contests as well as to other cases. (McCravy on Elections, sec. 306.) One undeviating rule of evidence is that the best evidence must be produced of which the nature of the case will admit; that secondary cannot be substituted for primary evidence unless it be shown that the latter is not within the power of the party, and the former should certainly not be substituted for the latter when it is apparent that the primary evidence is within the reach of the party and is *by the law* placed within his power.

Now, there are certain documentary evidences of the election which the law of Alabama provides should be preserved for the sole purpose of furnishing evidence of the vote in case of contest; these are the ballots which were cast at the election. The ballots cast at each voting place, *together with one poll-list*, are required to be carefully sealed up in the ballot-box and delivered into the custody of one of the inspectors, who is required to retain it for sixty days intact, and then to destroy the contents of the box, unless he is notified that the election of some officer for which the election was held will be contested, in which case he must preserve the box for such election until such contest is finally determined, or until such box is demanded by some other legal custodian during such contest. (Section 288, Code of Alabama.)

It will be seen that the ballots are required to be preserved expressly for the contestant. These are the evidences of the result of the election which the law provides. In addition to this the certified poll-lists, statements, &c., which are returned by the board of inspectors of each precinct and the county board of canvassers, are required to be retained intact in the office of the judge of probate. (Section 293, Code of Alabama.)

Now, if the returns are made by the board of inspectors and are attacked, or if insufficient or defective returns or no returns are made, will it be denied that these ballots are the best evidence of the result of the election, especially where it must be admitted from the nature of

the case that the ballots in the box retained by law for the purpose of evidence are the genuine ballots which were cast at the election? And if it be true, as it is, that the ballots from the election at each of these precincts in Dallas County were placed in the custody of the Republican inspector by the Republicans, that they were received from the hands of the voter by Republicans only, counted by Republicans only, placed in the box and sealed up by the Republicans only, will it be gravely contended that the contestant should be permitted to offer secondary and inferior evidence to prove what the vote was at the several voting places without having attempted to put these ballots in evidence, or furnish any reason or excuse whatever for his failure to do so? In no instance is any inquiry made for the ballots, nor is any effort made to produce them, not even where the testimony itself shows to whom the ballots were committed, and even in those cases where the person who had the ballots in his custody, as shown by the testimony, appeared and was examined as a witness by the contestant. Without showing that the ballots were not in his power to produce, contestant resorts to oral evidence. This he clearly could not do. Oral evidence cannot be substituted for any instrument which the law requires to be in writing, and no proof can be substituted therefor so long as the writing exists and is in the power of the party. (Greenleaf on Ev., sec. 86, vol. 1.)

In the contested-election case of Spencer vs. Morey (Smith's Digest, p. 449) it was admitted by both parties that no official returns could be found, because they had been abstracted or destroyed. This being the case, the minority of the committee say :

The best evidence, viz, the returns, having been lost or destroyed, secondary evidence is then admissible to establish what was the contents of the written instrument, viz, the returns. We understand the rule governing the admissibility of secondary evidence with respect to documents to be that proof of their contents may be established by secondary evidence, first, when the original writing is lost or destroyed; second, when its production is a physical impossibility, or at least highly inconvenient (p. 480).

In this case it is not shown that any of these conditions existed to justify the introduction of oral testimony. We can only conjecture why contestant failed to have the ballots produced, but we cannot avoid the suspicion which the law itself creates that the failure to produce the ballots was because they would not conform to the imperfect returnus or the unreliable testimony of the witnesses for the contestant. If this plain principle of law be not disregarded, it is unnecessary to further consider the testimony in relation to these precincts; but we think that an examination into the testimony produced will show that contestant has failed to establish the vote by satisfactory evidence.

In Martin's precinct the testimony shows (R., p. 120) that a large number of the colored voters were Democrats, and there were three recognized candidates for Congress at the election, viz, contestant, contestee, and W. J. Stevens.

Two witnesses are examined by contestant to establish the vote of this precinct. These are A. Martin (R., pp. 121 to 124), Ned Pettiway (R., pp. 114 to 121). Martin was an inspector of the election, and he is the only officer of the election who is examined. He states that he helped to count the ballots, though he could not read, and could not tell a Republican from a Democratic ballot (R., p. 123). He says, on p. 122:

Myself and Nathan and another counted them; we put them on the floor, counted them in two hats, one by one, and made a tally of them.

Ned Pettiway swears that he gave the inspectors the directions "how
H. Mis. 35—4

to count and how to tally;" that they did not know, and he had to stand outdoors and give them directions. He swears the tickets were counted by three separate men at the same time, each of them having a pile of the tickets and counting them in his hat. And he swears positively that these tickets were never read over but once, and then were read simply as "Republican" or "Democrats."

A. Martin says that the clerks read the names on the tickets, and it is not pretended that any of the inspectors read them. He only knows that there were sixteen Democratic votes cast, because, as he states (R., p. 124), "I made them [the clerks] hand them out to me."

To show how unreliable is the testimony of the witness Martin, and of these witnesses generally, we ask attention to his statement (R., p. 124) where he swears positively that the statement of the result of the election was signed by the inspectors; and yet when that statement is put in evidence it is found to be unsigned. Now, if these ballots were simply counted as Democratic or Republican, and if all the candidates on the Republican ticket were the Republican candidates, and all the candidates on the Democratic ticket were only Democratic candidates, how is it possible to determine from this testimony whether or not Mr. Stevens received any votes? The law of Alabama in regard to the counting of ballots is as follows:

SECTION 1. In counting out, the returning officer or one of the inspectors must take the ballots one by one from the box in which they have been deposited, at the same time reading aloud names of persons written or printed thereon, and the office for which such persons are voted for. They must separately keep a calculation of the number of votes each person receives and for what office he receives them; and if two or more ballots are found rolled up or folded together, so as to induce the belief that the same was done with a fraudulent intent, they must be rejected; or if any ballot contains the names of more than the voters had a right to vote for, the first of such names on such ticket to the number of persons the voter was entitled to vote for only must be counted.

When asked what oath was taken by the inspectors, the witness Martin, tells us:

I swore the inspectors; I told them to raise their hand and say, you solemnly swear to go forth and do the best they could in this election to discharge those duties.

The law makes the following provision as to the oath:

Before opening the polls the inspectors and clerks may take the oath to perform their duties at such election in accordance to law, to the best of their judgment, and the inspectors must also swear that they will not themselves or knowingly allow any other person to compare the number of the ballots with the number of the voters enrolled, which oath may be administered to the inspectors by each other, or by a returning officer, or by a justice of the peace. (Code of Alabama, sec. 265.)

Now we do not contend that the votes cast at this election should not be counted because the ballots were not counted in the careful manner provided by law, nor because the oath provided by law was not taken by the inspectors, but what we believe is that as the inspectors were too ignorant to know what oath should be taken, or either too ignorant or too careless of their duties to ascertain the result of the election as provided by law, and as it is shown that their counting of the votes was of such a character as to make it unreliable, the House cannot say from the evidence what the vote was.

In the examination of Pettiway he states, on page 116, the ballots were kept by one of the inspectors, as were one of the poll-lists, and he repeats this statement (R., p. 120). Why did not the contestant have a subpoena *duces tecum* served upon the inspector who had these ballots in his custody? Does not this testimony show clearly the necessity of adhering to the rule of evidence before laid down?

In Lexington precinct contestant claims 320 votes, and gives none to either Mr. Stevens or Mr. Shelley. Now, the imperfect return from this voting place which was sent to the board of canvassers, though unsigned, shows by its contents (a tally of the vote) 11 votes for Mr. Shelley and 140 for contestant. Evidently the inspectors had commenced to keep a tally of the vote cast, and had given 11 votes to Mr. Shelley and only 140 to Mr. Smith, yet on the witness stand they say that contestant received 320 votes and contestee none. Only two witnesses are examined, and these are July Adams and Harris Mosely. Adams was present and assisted in the counting of the vote. He says that the ballots were never read when they were counted (R., pp. 127, 128). They were all considered as Republican ballots and as votes for contestant, and so counted without ever being read. His testimony as to this is as explicit and positive as testimony can be made. There is no evidence to contradict or discredit Adams' testimony.

Witness Mosely was a deputy marshal who did not see the votes counted and does not pretend to know what the vote was. (R., pp. 129-131.)

These ballots have never been counted so as to ascertain the actual result of the election; but if the contestant had put them and the poll-list in evidence they could have been counted and the result of the election correctly ascertained. Until those ballots are read and counted, or until the voters themselves are examined and testify, no man can say what was the result of the election at that precinct.

In Chillatchi precinct the inspectors numbered the ballots, in violation of the law, and in direct violation of their oaths compared the numbered ballots with the name opposite the corresponding number on the poll-list. (R., p. 143.) No account of the vote cast was kept by the inspectors as the ballots were being counted. In the language of the witness "no one did any writing while the votes were being counted." (R., p. 143.)

The provisions of law in relation to the counting of the ballots were entirely disregarded. The tickets were not read when they were counted, or at any time, as far as it appears by the evidence. They were counted by William Perry, a clerk, and not an inspector of the election; and Lindsey Irby swears that Perry opened the ballots to keep from counting two, but "that he never did read them all over any time." (R., p. 136.)

Tony Abels (R., p. 142) contradicts the testimony of Irby to some extent by stating, first, that only the name Smith and Garfield were called out, and then that only the names of the electors were called. But Lindsey Irby states that the ballots cast at the election were delivered into the custody of Harris Mosely, one of the inspectors. Why were not these ballots produced in evidence?

In River precinct Dave Barnes, one of the inspectors (R., p. 93), was made the custodian of the ballots, and though he was examined as a witness for contestant he was not even asked to produce the ballots. Contestant's witnesses give him 314 votes at this precinct and contestee only one; they all swear to this precise number, yet the tally-sheet returned by them to the board of canvassers, which is in evidence, shows only 305 votes for contestant.

In Pine Flat precinct the ballots were delivered to the custody of Sam. Boner (R., p. 81), one of the inspectors. They were not counted by the inspectors, but by the two clerks and one inspector (R., p. 82). This is the testimony of Square Grumbers, who swears that he took the ballots out of the box as they were being counted, while Shadric Tarber, United

States supervisor, is equally positive that Gabe Hayden performed this duty.

In Mitchell's precinct we have only secondary evidence as to what the vote was, but when asked why the inspectors did not sign the return we have as an excuse that they "forgot it." Their return, however, though unsigned, gives contestant only 355 votes, while all three of the witnesses, Hatcher, Thomas, and Moore, state that he received 360.

No attempt is made to put in evidence the ballots which were cast at the election. Contestant does not even examine Henry Vasser, who took down the names of the voters as they voted, and delivered their tickets to them. His testimony would have been valuable, because he was not one of the officers of election who forgot one of the important duties of such office and made a return of 355 tallies thereon, when the correct number, as they swear, was 360. We merely comment upon the character of the testimony in relation to these precincts in order to show that in the absence of the ballots it is unsatisfactory and unreliable in the highest degree.

• LOWNDES COUNTY, WHITEHALL PRECINCT.

Contestant proves by his own witness, J. V. McDuffie, who as judge of the probate court was a member of the board of canvassers for this county, that when the box was opened in the presence of the board it was found to contain 45 ballots for James Q. Smith for member of Congress, and between 200 and 300 ballots for William J. Stevens for Representative in Congress. As there was no statement of the result of the election by the inspectors found in the box, the board of canvassers were unable to count the vote. Now, McDuffie says:

It's my opinion from examination and inquiries I have made that there was a fraud at Whitehall beat, and that it was done by the box being opened from the bottom and everything in it except 45 tickets with Smith's name upon them taken out, and these Stevens tickets put in.

McDuffie was the warmest friend of Mr. Smith, and was the officer before whom all of his testimony was taken. He does not inform us what was the extent of his examination or the nature of the inquiries he made. Now, contestant having proved what were the character of the ballots found in the ballot-box by his own witness, it is then attempted to set aside the force of this testimony by accepting the mere opinion of this witness that the box was tampered with. But there is positive evidence that the box, when opened by the board of canvassers, was, with its contents, in the same condition as when delivered by the inspectors to the returning officer of the precinct, and by him delivered to the returning officer (the sheriff) of the county.

The returning officer of the precinct was Phillip White, the Republican United States supervisor, and he swears that he delivered the box intact to the sheriff of the county (R., p. 176), and Mr. Graves, the sheriff, swears that the box, with its contents, was delivered by him to the board of canvassers in the same condition in which it was received.

It is not pretended that the ballots were tampered with before they were delivered to the returning officer of the precinct; nor could it be, because, White, Republican supervisor, and Willis Brady (R., p. 199), the Republican inspector, testified to the contrary; nor can it be pretended that the official statement of the result of the election was put in the box and fraudulently extracted, because White, the Republican supervisor and returning officer, testifies that nothing was in the box "but the clerk's list and the tallies." The box and the ballots are not

put in evidence, so that the House is unable to say, from examination, whether the bottom of the box had been removed, or whether anything in the appearance of the ballots indicated that they were not those actually cast. The statements of the witnesses, supporters of contestant, that the vote was different from what the ballots themselves show, is setting up the mere oral declarations of these witnesses as to what the count was, or the count itself against the ballots, it not having been shown that they were not the actual ballots cast at the election. The officers of the election, White and Brady, who testify that the vote as counted does not conform to the ballots as found in the box, were also the officers who negligently or corruptly neglected or failed to make the board of canvassers a lawful return of the vote. Under these circumstances it appears to us that the only satisfactory evidence as to what the vote was at this precinct must be the testimony of the voters themselves, and they have not been examined.

PINTLALA PRECINCT.

The officers of election at this precinct consisted of three Republican inspectors, two Republican clerks, one Republican United States supervisor, William G. Gaskin, and Samuel M. Duncan, United States supervisor on the part of the Democrats. Now, upon the testimony of Gaskin alone, it is alleged that one E. P. Holcombe came into the room where the election was being held before the polls had closed and substituted the fraudulent for the genuine box, carrying the genuine box off with him. If this were true, some of the other five Republican officers of the election would certainly have had knowledge of it, and could have been examined by contestant to support the evidence of Gaskin, and the necessity for corroborating his testimony must have appeared, when in reply to a question as to whether or not he had been expelled from the legislature of Alabama for bribery (R., p. 207), he says:

I decline to answer any further questions on that subject, because I do not think it is right.

Holcombe had died before the testimony was taken, and the only political friend of contestee present, Mr. Mason, is examined by contestee to rebut the testimony of Gaskin. Mr. Mason says (R., p. 555) that complaint having been made that the boxes were changed, he "scrutinized the said box carefully, but could perceive no difference in it." He also informs us that the inspectors one at a time went to dinner, leaving the box in charge of the other two, and Mr. Gaskin admits that he was not present when the boxes were changed. The inspectors counted the ballots in the box and did not reach the opinion that the box had been changed until they found that, although there were 355 names on the poll-list, there were only 354 ballots in the box. In their return (R., p. 550) they state this as their reason for not believing the box containing the ballots to be the correct box, but they do not say in their return that they saw the box changed or that they noticed such a difference in the box as to satisfy them that it was changed. There is a mystery about the entire matter.

As the polls were not closed when the alleged change was made, how could a box have been prepared containing within one of the correct vote, and how could one man walk into a polling place and quietly carry off the ballot-box without opposition or objection on the part of the officers present, when six of those officers were opposed to the change? The ballots in the alleged false box were never counted. But admitting that the box was fraudulently changed as alleged, the ques-

tion arises, what was the actual vote, and contestant fails to show this. To prove the vote he examines two witnesses, the Gaskin before mentioned and Samuel M. Duncan. Mr. Duncan, who was not an officer of the election, gives his opinion as to the vote, and bases it, to use his own language (R., p. 202), "on the number of persons voting the Republican ticket who were there to vote and the number who were there to vote the Democratic ticket."

But to show how uncertain his knowledge is, after stating the number of Republican votes to be about 225, he immediately changes his opinion and thinks that it might have been 325. Gaskins says that he kept an account of the vote part of the day (before half past three), but that the only means that he had of knowing how many votes were cast was by seeing the ballots as they were handed in. But the law requires that the ballots shall be folded when cast, and that they shall not be received when not folded, and Mr. Mason swears that the ballots were folded when voted (R., p. 555), thus sustaining the presumption of law to that effect.

We are left in doubt as to whether any vote from this precinct was included by the board of canvassers when estimating the vote of the county, as there is no testimony on that subject.

HOPEWELL PRECINCT.

The election at this precinct was conducted by only two inspectors' and as the law requires that three inspectors should hold the election, it was void (*Howard vs. Cooper*, 1 Bartlett, 334). There were two Democratic inspectors appointed to act, but the testimony shows (R., p. 551) that one of them could not serve because of sickness in his family, and that the other was prevented from serving by his duties as a practicing physician. -

Nothing was returned from this precinct but a poll-list and a lot of loose tickets, the most of which appeared to be for Mr. Stevens, although they were not counted. Mr. Jones, the returning officer of the precinct, states that he delivered the box to the returning officer of the county in the same condition in which he received it (R., p. 546), and that the box when delivered to him was fastened with tacks, but not sealed. He also swears that most of the colored people of that precinct were for Mr. Stevens (R., p. 546), and in this he is corroborated by Mr. Sullivan (R., p. 551). The two inspectors say that Mr. Smith received 298 votes and Mr. Shelley 24, Stevens none; while Mr. McDuffie admits (R., p. 16) that the actual Republican vote of that precinct was 200, and the Democratic 100.

Now, if this election were not void, we have only the testimony of two inspectors, members of the same party, who performed their duties with the highest degree of carelessness, to use no harsher word, as to what the vote was; their statements being in opposition to the evidence of the ballot themselves and to the wishes of the voters. It is clear that in a case of this kind, where the ballots are attacked and where there is no return, the only satisfactory evidence of the vote must be that of the voters.

BENTON PRECINCT.

The evidence is that there were two elections held in this precinct, from one of which a return was made, and presumably the vote was counted by the board of canvassers in estimating the result of the election in the county, but we are not informed what this vote was.

Now, contestant claims that this election was void, and that the election at the other polling place was a lawful one. We believe from the evidence that the latter election was technically the correct one and that the former was not. But how is it possible to correct the vote of the county by adding thereto the vote cast at the true election (which has not been included in the vote of the county) and taking therefrom the vote cast at the void election, there being no evidence as to what the latter was. As there was doubt as to which was the true voting-place, it might be true that any number of the voters voted at both, as they would have a lawful right to do, because only one of the elections could be legal. It must be clear to any one that it is impossible to correct the vote of the county until it is shown by evidence what was the vote at the void election in this precinct.

NEWBERN PRECINCT, HALE COUNTY.

Merritt House, the Republican supervisor, alleges that as the ballot-box was being taken from one room to another after the polls were closed, and before the votes were counted, it was carried away and a false one substituted. This removal from one room to another was made with the consent of all of the officers of the election. Robert Lee swears that the ballot-box was not changed (R., p. 487). He was a Republican inspector. In his testimony, Lee is corroborated by the testimony of M. S. Harron, a clerk of the election, and T. L. Huggins, an inspector. The testimony of House stands alone, unsupported by other evidence. But if the boxes were changed, and the ballots, if counted, not the actual ballots cast, we would be met with a great difficulty in attempting to correct the vote—and this is, that it is not shown by the testimony what was the character or contents of the return by the inspectors of the election from this precinct, and what, if any, vote from this precinct was counted by the board of canvassers of the county in estimating the votes of the county. How, then, could the true vote be added to the vote of the county without first subtracting the false vote?

It is nowhere shown what ballots were in the alleged false ballot-box; the testimony does not show whether or not they were counted and a return of them made. If this obstacle could be overcome, the next inquiry would be as to the actual vote polled. Merritt House attempts to give an estimate (R., p. 301), but admits (R., p. 305) that he kept a "tally" of only eight votes, and that he could not swear with any degree of certainty to the number of votes cast for contestant.

E. J. Lavender, who was not an officer of the election says that he stood outside the voting place and took down the names of 398 electors who voted for contestant; a list of those names was put in evidence, and although the number 398 appears upon it as a total, only 332 names are found in the list. Sampson Hill also gives the number of votes for contestant at 398, and puts in evidence a list of the persons voting, showing 133 names and 395 tallies, though the witness states upon the paper that the total was 399.

It is plain that the testimony of these witnesses as to the vote cast for contestant was not based upon the account kept by them, but upon an agreement reached by them subsequent to the election. Testimony like this cannot be substituted for the testimony of the voters themselves as to how they voted. It will be seen how impossible it is from this testimony to arrive at a satisfactory conclusion as to what the vote was.

PERRY COUNTY.

The allegations that the inspectors of election appointed by the county board of supervisors in this county were not fairly representative of both parties, the Republican as well as Democratic, is not supported by the proof.

Mr. Billingsly shows (R., p. 254) that, as chairman of the executive committee of the Republican party of this county, he made the request to be allowed to name a Republican inspector for each voting place, and that no attention was paid to his request; but there is no testimony, positive in its character, to show that the Republicans were not properly represented among the board of inspectors at each voting place. The returns from five precincts of this county are attacked by contestant; the precincts are Hamburg, Scott's, Walthall, Marion Box 1, and Cunningham. They are attacked upon the ground that the returns made were not in accordance with the vote as cast, a fraudulently incorrect return being made, as alleged, from each of these precincts by the inspectors. At the outset we are met by great difficulties applicable to all these precincts, owing to the defect in contestant's proof, and these are:

First. There is no evidence as to the character or contents of the returns made from any of these precincts by the several boards of inspectors and the board of supervisors of the county, or whether any return at all was made.

Second. There is no evidence that the vote as returned from any of these precincts was counted by the board of canvassers in estimating the vote of the county. How, then, can the vote of the county be corrected by the addition of the alleged true vote until it be known whether or not the false votes should be deducted from them? As by law required there was on file in the office of judge of probate of the county the original returns from each of these precincts, and from all of the other precincts of the county from which returns were made. There was also on file an official statement prepared, as required by law, by the county board of canvassers, and signed by them, showing the vote for each candidate from each precinct as found and estimated by them. Neither these returns nor this statement was put in evidence; nor is it proved what was the vote of the other precincts of the county about which there is no contest. It appears to us, therefore, impossible in the present condition of the proof to correct the vote. The presumption of law that an officer performs his duty cannot be applied to cases of this character to supply the defect in the proof. The law would presume, in the absence of all proof, that the inspectors at the several precincts made a correct return in accordance with the vote as actually cast, but the law will not presume that they made a fraudulent return. But unless the returns, if made, were fraudulent, contestant has nothing to complain of. All the presumptions of law are in favor of the correctness and good faith of the inspectors. Fraud is never presumed, it must be proved; and the House will not presume, in the absence of positive proof, that the inspectors made a fraudulent return. This principle of law is so clear and so universally recognized as to require no further argument or reference to authorities. We shall examine the testimony in relation to the various precincts to see if, regardless of the defects in the proof already pointed out, fraud on the part of the officers of the election, or the true vote as cast is satisfactorily shown by the proof.

HAMBURG PRECINCT.

B. F. Watson was the Republican United States supervisor; the in-

spectors were composed of two Democrats and one Republican (R., p. 105). Watson swears that after the polls were closed the ballot-box in which the ballots voted had been cast was fraudulently changed for a false box containing fraudulent ballots. He says that only one of the inspectors, Juan Harris (R., p. 107), was engaged in changing the box, and that though he was present and saw the change made he said nothing about it, and called no one's attention to it at the time. He made no protest or objection whatever (R., p. 110). The two ballot-boxes, the true and the false one, were in the same room, and yet, according to his own statement, he permitted the ballots in the false box to be counted as the genuine ballots, and did not utter a word of objection. Witness, as United States supervisor, made a report giving contestant 338 votes, contestee 40, and Mr. Stevens 5, making 383, although he himself states there were only 378 votes cast (R., p. 110). Now when asked from what source he obtained the data from which to make his report, he says: "I knew the sentiments of the people, and just how they would vote, and I taken a record of the committee's list, and got my information from them." He kept no list or record himself (R., p. 110). The other witnesses as to the actual vote are Green Johnson, a deputy marshal, and J. T. Harris. They were not officers of the election, and were not in the room where the election was being conducted. This room was in the second story of the building, and to cast his ballot the voter had to enter the building on the first floor and then ascend a flight of stairs (R., p. 256). There was a "committee" of Republicans, five in number, to keep an account of the Republican vote as cast, and they selected one Silas Benjamin to take down the names of the Republican voters (R., p. 144). But not one of these committeemen, nor Benjamin, is examined as a witness, nor is the list of names kept by Benjamin put in evidence. The witness Johnson states that Benjamin told him that there were 340 names in his book, and he has no other knowledge of its contents (R., p. 146). J. T. Harris kept a tally of 323 voters whose tickets he saw in their hands, but he states that he does not know whether these tickets were actually cast, as he did not see one of them voted (R., p. 256). The voters themselves are not examined.

SCOTT'S PRECINCT.

The officers of election at this precinct were Charles W. Turpin, John C. Lee, and Lazarus Avery, inspectors; E. N. Driver and E. Evans, clerks; and Walter Lowery, United States supervisor; Lee and Lowery were Republicans. Lowery swears that Turpin gave him \$35 as a bribe to permit him (Turpin) to exchange Smith tickets for Shelley tickets, and that he took the money, put it in his pocket, and has retained it ever since (R., p. 159), and permitted the fraud to be committed. (R., p. 157.) His testimony is corroborated by no one; its truth is positively denied by Lazarus Avery, the Republican inspector and witness for contestant, who received the tickets from the voters throughout the day. It is also positively and unequivocally denied by Turpin, Lee, Driver, and Evans, the other officers of the election. The character of the fraud, as described by Lowery, was that Turpin and Lee exchanged Smith tickets by putting them in their pockets and substituting others, and erasing Smith's name from the ticket and substituting Stevens's therefor. This, of course, could not have been done without the knowledge of Avery, who was standing by the ballot-box during the day. Turpin also denies most positively giving a bribe to Lowery, and the other officers of election swear that they are entirely ignorant of such an occurrence. Mr.

Robert Perryman (R., p. 485) states that five or six days after the election Lowery said to him that he saw nothing done at the election but what was fair, and that it was not true that any money had been paid to him (Lowery).

Perryman swears that he knows Lowery's character for truth in the neighborhood where he lives, and would not believe him on oath. Lowery states that he kept an account of the vote as it was cast. He says, "I would get one letter of the ticket as it passed in and that would be Q or M" (R., p. 160), but shortly after he states in regard to the manner in which the ballots were cast, "some would be folded, some with two ends doubled together, and some would be wide open." (R., p. 161.)

Yet he pretends in this way to have kept a tally of all the Republican votes cast (R., p. 161). The law requires the votes to be folded, and William Henry, a witness for contestant, says that he saw the ballots for contestant issued to the voters, each of whom was given two, and then says the voters were shown by the persons distributing these tickets how to fold them as they voted (R., p. 297). Henderson kept an account of the voters for contestant, as the tickets were distributed to them, but he did not read these tickets. He says, "I knew they were Smith tickets, because the men who had them only had Smith tickets." But he read none of these tickets (R., p. 297), and the persons who actually did distribute the tickets to the voters are not examined. With the exception of Lowery he is the only witness for contestant as to the vote actually cast.

WALTHALL PRECINCT.

There is nothing in the testimony as to which political party the inspectors at this precinct belonged; there is no evidence as to what the vote actually was as ascertained by the board of inspectors. The Republican United States supervisor did not act; his name was Enoch Jones. The witness, William Q. Smith, states: I saw him (Jones) make application to be admitted as United States supervisor, and he was refused by Mr. Pollard, one of the inspectors (R., p. 169). Mr. Smith did not live in this precinct, but lived in Autauga County, in another Congressional district. He was unable to say where Jones, the supervisor, resided. Now we submit that if this supervisor was duly commissioned and authorized to act as such officer, he need not have called upon Mr. Pollard, one of the inspectors, for permission to act, and he ought not to have refrained from acting merely on the refusal of Mr. Pollard to grant him permission. He does not appear to have called upon the other inspectors for permission, or for a recognition of this right. He had as high a right, if not a higher one, to be at the voting place as Mr. Pollard or any officer of the election. It is not pretended that he attempted to exercise his right notwithstanding the refusal of Mr. Pollard, or made any attempt to enter the room where the ballot-box was placed. It is not pretended that any violence to his person was used or threatened to be used against him; the supervisor failed to perform his duty without sufficient reason. It does not appear to us that the presumption which exists in the case of all officers acting within the scope of their authority, that their acts are correct and lawful, is impeached or overcome by the failure of this supervisor, under the circumstances, to perform his duty.

MARION PRECINCT, BOX NO. 1.

The evidence as to this precinct is entirely inadequate to establish

fraud or even misconduct on the part of the officers. S. B. Price, United States supervisor, states that after the vote for Smith and Stevens was counted, he saw one of the inspectors, with some tickets in his hand, go toward the water-bucket and remain long enough to take a drink, but he could not say that anything wrong was attempted or intended (R., p. 267). At another time he saw one of the inspectors hold tickets in his hand and he stopped taking tally to watch him, but he saw him do nothing wrong with these tickets, nor does he know what kind of tickets they were. When the polls were closed and the time for counting the ballots arrived, it was found that the ballot-box was unlocked, but it is not pretended that any one knew this, and upon opening the box to count the ballots it was found that the cover was tight and was lifted with some difficulty. (See the testimony of Price, the Republican supervisor, R., p. 265, and Ed. Spaulding, the Republican inspector, R., p. 272.) The box was not removed from the table during the day, and Spaulding and Price were at hand near to the box throughout the day. Price, as supervisor, made a report conforming to the return by the inspectors (R., p. 402), and it was not until the 18th of November that he made a different report, for the reason, as he says:

The former report was not according with all the voters to whom I talked about it, said about it, and I have talked to a great many.

James F. Bailey kept a tally of 655 colored men who voted (R., p. 259), and he estimates that these votes were equally divided between Mr. Smith and Mr. Stevens (R., p. 260).

M. B. Boyd kept an account of the votes polled, but admits (R., p. 278) that he cannot state from his own knowledge, with any degree of accuracy, the number of votes that any candidate received. Of course the mere estimates and opinions of persons who were not officers of election, when they are confessedly uncertain and incompetent, must go for naught. Especially so in cases where no fraudulent acts on the part of the officers of election are proved.

CUNNINGHAM PRECINCT.

The testimony does not show to which political party the inspectors belonged. Wm. Jenkins did not act as United States supervisor in this precinct although he had been duly appointed and commissioned. The efforts of Jenkins to act are described by the witness Nix Stevens, as follows (R., p. 284):

He walked up presenting his commission, informing the inspectors that he had been appointed supervisor of that body and was prepared to discharge the duties of that office. Mr. Cook (returning officer) met him and said: "Old man, you can't act here. You are not a resident of this beat."

It does not appear that Jenkins made any further effort to act. Jenkins did not reside in the beat, but lived in Scott's beat (R., p. 300). This being the case, he was not a qualified voter of the precinct and therefore not qualified to serve as United States supervisor (see Sec. 28, U. S. Rev. Stat.). Without discussing the abstract legal question as to whether Jenkins, having been duly commissioned, should have been permitted to act though disqualified by law, we submit that neither the circumstances of the refusal as above described nor the failure of Jenkins upon this refusal to act are sufficient to create a presumption of fraud against the officers of the election or to overturn the presumption that their acts were in accordance with the law.

Beverly Smith, Nix Stevens, and Henry Wells distributed contest-

ant's tickets to the voters, according to the testimony of Wells, but Nix Stevens gives the names of three persons in addition who distributed these tickets (R., p. 282). Stevens gave out all the tickets he had in his hand (R., p. 275). Gave to some two and others one ticket, but he does not attempt to say how many voters took tickets from him, nor can he swear positively that the persons who took tickets from him voted the tickets that he gave them (R., p. 281). Nix Stevens counted 300 and odd tickets which were distributed to the voters, but when asked if he could swear of his own knowledge that over 300 votes were cast for contestant (R., p. 284), replies :

I cannot swear out of my own knowledge, but the sentiment said so and I am bound to believe so.

Beverly Smith states that he saw 200 persons vote for contestant because he saw their ballots before they voted, and watched them when they voted ; but when asked if he could swear of his own knowledge that these 200 persons cast the ballots that they showed him, replies : "That is my belief about it" (R., p. 299). In the absence of any proof of fraud on the part of the officers of election, certainly these calculations and opinions of persons not appointed to act as officers of election, mere lookers-on without official responsibility, cannot be sufficient to set aside the returns.

POPE'S PRECINCT.

One of the inspectors at this precinct was taken sick and ceased to act. The others made no return of the vote, but simply put the tickets in the ballot-box, sealed up the box and delivered it to the returning officer. These ballots are not put in evidence, nor are the voters examined to prove what the vote was. Contestant attempts to prove the vote by other evidences. Henry Robinson (R., p. 16) says :

I issued about 40 tickets there that day, and I did not notice what the voters did with them.

Lindsey McDaniel says (R., p. 317) :

I had all the tickets, and then I gave out about 600 with Smith's name on them, and all I saw were going up to the polls with them. * * * I gave each voter two tickets, and I gave it to them so that if anything should occur that they would have a duplicate to show who they voted for, and I saw about 300 voters who had Smith tickets go to the polls, and whether they put them in or not I cannot say.

This witness could not read, and only knew that he had Smith tickets because a man told him so (R., p. 318). As the ballots were required by law, as a part of the return made, to be kept on file in the office of the judge of probate, contestant could easily have put them in evidence, proving by the inspectors that they were the ballots cast, and thus establishing the vote ; or, failing this, he could have proved it by the testimony of the voters. But as it is, the evidence as to this precinct makes it impossible to arrive at the correct vote.

PRAIRIE BLUFF, WILCOX COUNTY.

The return was made from this precinct to the board of canvassers of the county, and, as shown by the official statement in evidence (R., p. 516), the vote of this precinct was not counted. The ballots are put in evidence, and there are 335 for contestant and 24 for contestee, if the ballots referred to on pages 222 and 223 of the record refer to this precinct. These were probably the ballots that were cast at the election, and therefore should be counted, 335 for contestant and 24 for contestee.

CONCLUSION.

We have sufficiently indicated our views as to the evidence, as we have examined the testimony applicable to the various counties and the precincts therein. As the result we do not see how, without violating the well-established rules of evidence, without accepting mere assumptions, speculations, and opinions for positive proof, without presuming that votes were given to contestant and contestee by the county boards in estimating the vote of the county, upon no evidence whatever that such votes were given, or in many cases upon no evidence whatever as to the vote which was given, it is possible to reach the conclusion that the contestant has shown that he was elected or that the contestee was not elected.

We will add that there are some precincts to which we have not referred, because it will not be pretended that the vote of those precincts is changed or established by the proof. These are Bethel, Rose Bud, and Canton, in Wilcox County; Brooks precinct, in Lowndes County; Camden, Snowhill, and Pineapple precincts, in Wilcox County; and Selma, Burnville, and Valley Creek precincts, in the county of Dallas.

We therefore recommend the adoption of the following resolutions:

1. *Resolved*, That James Q. Smith was not elected as a Representative to the Forty-seventh Congress of the United States from the fourth Congressional district of Alabama, and was not entitled to occupy a seat in this House as such.

2. *Resolved*, That Charles M. Shelley was duly elected as a Representative from the fourth Congressional district of Alabama, and is entitled to retain his seat as such.

WILLIAM M. LOWE vs. JOSEPH WHEELER.**EIGHTH CONGRESSIONAL DISTRICT OF ALABAMA.**

In this case a large number of votes cast for contestant were rejected and not counted because the ballots bore the numerals 1st, 2d, 3d, &c., designating the electoral districts of the State, and the votes of various precincts were challenged on the ground of fraud.

Contestee claimed that many persons voted for contestant who had not the legal qualifications: that they were minors or convicts or non-residents, or were not registered.

Held, That the ballot containing the numerals do not infringe upon either the letter or spirit of the statute, which provides that "the ballot must be a plain piece of white paper, without any figures, marks, rulings, or embellishments thereon."

Where returns are successfully impeached and the true vote is proven by the voters themselves being called to testify, such returns must be corrected as proven.

The charge of voting for contestant by minors, convicts, and non-residents held to be not proven.

The constitution of Alabama nor the statutes of that State do not make registration an absolute condition or prerequisite of voting.

The House adopted the majority report.

MAY 17, 1882.—Mr. HAZELTON, from the Committee on Elections, submitted the following

R E P O R T:

The Committee on Elections, to whom were referred the papers relating to the contested-election case in the eighth Congressional district of Alabama, having had the same under consideration, submit the following report :

This contest comes from the eighth district of Alabama, composed of eight counties in the northern part of the State. The secretary of state certifies as follows, as appears on page 470 of the record:

Returns of the Congressional election in the eighth district, November 2, 1880.

| Counties. | Joseph Wheeler. | Wm. L. Lowe. |
|-----------------|-----------------|--------------|
| Morgan | 1, 392 | 928 |
| Madison | 2, 825 | 3, 501 |
| Limestone | 1, 569 | 1, 704 |
| Lawrence | 1, 517 | 1, 993 |
| Lauderdale..... | 1, 709 | 1, 322 |
| Jackson | 1, 948 | 1, 680 |
| Franklin | 611 | 400 |
| Colbert | 1, 237 | 1, 237 |
| Total | 12, 808 | 12, 765 |

STATE OF ALABAMA,

Office Secretary of State:

I, W. W. Screws, secretary of state, do hereby certify that the above is a correct copy of the official returns of an election held in the eighth Congressional district of Alabama on the second day of November, A. D., 1880, as returned to this office by the supervisors of election for the various counties composing said district, at which election Joseph Wheeler and William M. Lowe received the votes set opposite their respective names.

Witness my hand, at office, in the city of Montgomery, this 13th day of January, A. D. 1881.

W. W. SCREWS,
Secretary of State.

Upon this return the contestee, Mr. Wheeler, was declared elected by forty-three majority, and received the certificate of election.

It is conceded that a much greater number of votes were received for Lowe than appears upon said certificate of the secretary of state, and it is practically admitted that if all the votes cast and received for Lowe had been counted and returned by the inspectors of the election the result would have shown the election of Mr. Lowe by a large majority.

As the case is presented to the committee, two leading and controlling questions arise for consideration and determination: 1st, as to the proper and legal form of the ballot; and, 2d, as to registration. The evidence discloses that in order to declare Mr. Wheeler elected by forty-three majority the inspectors of the election at fourteen out of nearly two hundred precincts in said district had to reject and did reject in the count 601 ballots cast for the contestant.

The number of ballots so rejected is assumed in the arguments of contestee's counsel at about 515.

These ballots were rejected by said inspectors because they had on

them the numerals 1st, 2d, 3d, &c., designating the electoral districts of the said State. The rejected ballots were in the following form and words:

FOR ELECTORS FOR PRESIDENT AND VICE-PRESIDENT:

STATE AT LARGE.

W. L. BRAGG.
E. A. O'NEAL.

DISTRICT ELECTORS.

1st District—D. P. BESTOR.

2d District—JOHN A. PAGGETT.

3d District—J. F. WADDELL.

4th District—JOHN ENOCHS.

5th District—THOS. W. SADDLER.

6th District—J. G. HARRIS.

7th District—F. W. BOWDON.

8th District—H. C. JONES.

FOR CONGRESS—EIGHTH DISTRICT.

WILLIAM M. LOWE.

And the statutes to be construed in the consideration of this question are as follows:

AN ACT to amend section 276 of the code of Alabama.

SECTION 1. *Be it enacted by the general assembly of Alabama,* That section 276 of the code of Alabama be amended to read as follows: One of the inspectors must receive the ballot, folded, from the elector, and the same passed to each of the other inspectors, and the ballot must then, without being opened or examined, be deposited in the proper ballot-box.

Approved February 8, 1879.

AN ACT to amend section 274 of the code of Alabama.

SECTION 1. *Be it enacted by the general assembly of Alabama,* That section 274 of the code of Alabama be amended so as to read as follows: The ballot must be a plain piece of white paper, without any figures, marks, rulings, characters, or embellishments thereon, not less than two nor more than two and one-half inches wide, and not less than five nor more than seven inches long, on which must be written or printed,

FOR ELECTORS FOR PRESIDENT AND VICE-PRESIDENT:

STATE AT LARGE.

JAMES M. PICKENS.
OLIVER S. BEERS.

DISTRICT ELECTORS.

1st District—C. C. McCALL.

2d District—J. B. TOWNSEND.

3d District—A. B. GRIFFIN.

4th District—HILLIARD M. JUDGE.

5th District—THEODORE NUNN.

6th District—J. B. SHIELDS.

7th District—H. R. MCCOY.

8th District—JAMES H. COWAN.

FOR CONGRESS—EIGHTH DISTRICT.

WILLIAM M. LOWE.

or partly written and partly printed, only the names of the persons for whom the elector intends to vote, and must designate the office for which each person so named is intended by him to be chosen; and any ballot otherwise than described is illegal, and must be rejected.

Approved February 12, 1879.
(Acts Ala., 1878-'9, page 72-'3.)

AN ACT to amend section 286 of the code of Alabama.

SECTION 1. Be it enacted by the general assembly of Alabama, That section 286 of the code of Alabama be amended so as to read as follows, viz:

§ 286 (264). *Manner of counting out votes.*—In counting out, the returning officer, or one of the inspectors, must take the ballots, one by one, from the box in which they have been deposited, at the same time reading aloud the names written or printed thereon, and the office for which such persons are voted for; they must separately keep a calculation of the number of votes each person receives, and for what office he receives them; and if two or more ballots are found rolled up or folded together, so as to induce the belief that the same was done with a fraudulent intent, they must be rejected, or if any ballot containing the names of more than the voter had a right to vote for, the first of such names on such ticket, to the number of persons the voter was entitled to vote for, only must be counted.

Approved February 13, 1879.
(Acts Ala., 1878-'9, p. 73.)

The contestee in this case insists that the expressions "1st district," "2d district," which appear on said ballot, do of themselves render the ballots illegal under said section 274, as amended.

This statute provides that the "ballot must be a plain piece of white paper, without any figures, marks, rulings, or embellishments thereon." We are unable to conceive how this form of ballot infringes upon either the letter or spirit of the statute. If we are to adopt the narrow and strained construction of this statute presented by the contestee, then we must assume that the legislature of Alabama intended to impair and destroy the integrity of the legal voting power of the State instead of securing it in its proper rights, because it would be impossible to prepare a ballot that would stand the test of such a construction, and that could not be rejected at the caprice of a party inspector of elections for a reason as valid and strong as that presented in this case. Such a construction means simply disfranchisement of the citizen, and makes the law itself a fraud upon the freeman's boasted right of franchise. We quote with favor the following extract from the contestant's brief on this point:

Does the use of the numerals or figures 1st, 2d, &c., make the ballot illegal? The intention of the statute is to be looked for before construing it. The word "figures" must be construed in connection with the word "marks, rulings, characters, embellishments." If a construction so literal as that suggested by this objection be given this statute, no legal ballot can be written or printed, because the literal meaning of the word "character," for instance, would force one to print or write his ballot without making a letter, for a letter is literally a "character." A rejection of those ballots because they contained the letter "o," the "figure" of a circle, used in spelling contestant's name, would not have been further from a correct construction of the statute than the one which holds that the numerals 1st, 2d, &c., are "figures" within its meaning. The meaning is clear. The word "figures" refers to "embellishments, characters," designs, pictures, or prints that would deprive the ballot of its secrecy. The ballot must not contain a flag, an eagle, or other device. It must be on plain white paper.

It has been a long-standing custom throughout the South, as well as the North, and especially in Alabama, to designate and form electoral tickets in just this way, and no one ever claimed before that it impaired the secrecy of the ballot or was subject to the feeble objection now made against it. (Record, page 1229.)

The act to amend 276 of the code of Alabama declares that—

One of the inspectors must receive the ballot, folded, from the elector, and the

same passed to each of the other inspectors, and the ballot must then, without being opened or examined, be deposited in the proper ballot-box.

The act to amend 286 of the code of Alabama provides that—

In counting out, the returning officer or one of the inspectors must take the ballots, one by one, from the box in which they have been deposited, at the same time reading aloud the names written or printed thereon and the office for which such persons are voted for; they must separately keep a calculation of the number of votes each person receives and for what office he receives them; and if two or more ballots are found rolled up or folded together so as to induce the belief that the same was done with a fraudulent intent they must be rejected; or if any ballot containing the names of more than the voter had a right to vote for, the first of such names on such ticket to the number of persons the voter was entitled to vote for, only must be counted.

We conclude, from reading and construing these sections together, that the rejected ballots were legal, and should have been counted.

Mr. Webster, in the Rhode Island case, stated admirably the two governing principles of the American system of suffrage:

The first is that the right of suffrage shall be guarded, protected, and secured against force and against fraud.

The second is that its exercise shall be prescribed by previous law; its qualifications shall be prescribed by previous law; the time and place of its exercise shall be prescribed by previous law; the manner of its exercise, under whose supervision (always sworn officers of the law), is to be prescribed. And then again the results are to be certified to the central power by some certain rule, by some known public officers, in some clear and definite form, to the end that *two things may be done*:

First, that every man entitled to vote may vote; second, that his vote may be sent forward and counted, and so he may exercise his part of sovereignty in common with his fellow-citizens.

In a spirit as broad as this the bill of rights of the constitution of Alabama (sec. 34) declares that "the right of suffrage shall be protected by laws regulating elections," and prohibiting, under adequate penalties, all undue influences, &c.; and the constitution (art. 8, sec. 2) declares that "all elections by the people shall be by ballot."

The right of suffrage thus guaranteed by the constitution of Alabama cannot be imperiled or destroyed by any legislative enactment whose construction makes this great constitutional right of the freeman to hang upon the caprice or whim of the partisan inspector of elections, which, if exercised, as in this case, must inevitably and for all time sacrifice all the substantial rights of citizen franchise to doubt, shuffling, and uncertainty.

The style in which they were printed does not violate the secrecy of the ballot. They were printed on plain white, paper, without anything whatever upon them to betray their character or contents.

It is contended by the contestant that this peculiar construction of the law of Alabama had its origin in the following circular, issued and placed in friendly hands by the chairman of the Democratic committee, just before and on the day of election. The notice is at least significant:

DEAR SIR: As soon as the polls are closed, inform the inspectors of the election that the Lowe tickets with Hancock electors on them are illegal. They contain the figures 1st, 2d, &c., designating the district. These are marks or figures which are prohibited by the election laws (see acts 1878-'79, page 72), and all such tickets should be rejected when the votes are counted, after the polls are closed.

[Indorsed on back in writing:]
To be shown only to very discreet friends.

But we beg leave for a moment to refer to the bearing of the laws of the United States upon this question. Congress has the power (article 1, section 4) "to make or alter" State regulations as to "the manner"

of holding Congressional elections. In section 27, Revised Statutes, Congress has enacted that "all votes for Representatives in Congress must be by printed or written ballots." This provision as to the ballot is exclusive and supreme so far as it goes. The States cannot alter it. See also sections 2012, 2017, 2018 of the Revised Statutes. These sections relate to the appointment of supervisors and to the definition of their powers and duties in national elections.

The evidence shows that the following votes for contestant were illegally rejected in the count on the ground before stated:

REJECTED VOTES.

| | Votes. | Record page. |
|----------------------------|--------|---------------|
| Big Creek..... | 7 | 346-8-9 |
| Chickasaw..... | 8 | 404 |
| Courtland | 65 | 496-7 |
| Danville..... | 42 | 382 |
| Decatur | 3 | 376 |
| Elkmont..... | 56 | 339-341-3 |
| Falkville | 97 | 370-3-5 |
| Flint | 76 | 33 to 35 |
| Florence | 4 | 908 |
| Green Hill..... | 22 | 1388 |
| Huntsville | 61 | 37-41-2-6-7-8 |
| Kash's | 2 | 309 |
| Madison | 33 | 130-137-9 |
| Meridianville (No. 1)..... | 2 | 294-5 |
| Owen's Cross-Roads..... | 31 | 140-3-8 |
| Poplar Ridge..... | 41 | 150-3 |
| Russellville..... | 51 | 394-6-7 |
| Rejected votes..... | 601 | |

The evidence shows that these votes were cast for Mr. Lowe. The Flint box, with 76 votes for contestant and 59 votes for contestee, is put down with the rejected votes for convenience, although the whole box was rejected on account of some alleged irregularity on the part of the election officers. It is familiar law that innocent parties must not be prejudiced by such irregularities, nor deprived of their rights by matters occurring after the election, and over which they had no control. Flint box, therefore, must be counted. (See record, page 365, 367, 369. See *Platt vs. Goode*, Digest Election Cases 1871-'6, page 650; McCrary on Elections, page 145.)

MERIDIANVILLE, Box No. 2.

The inspector's returns from this box give contestant 47 votes, 18 less than the number received by the rest of the opposition ticket with contestant's name upon it. Every State officer at this box, in direct violation of the State law, was "a pronounced Democrat and Wheeler man." The friends of contestant determined, under the circumstances, to keep a tally-list of contestant's voters, as a check upon the inspectors.

John Wesley, who kept said tally-list, swears as follows :

Question. Was there or not an agreement between you and other colored men to endeavor to ascertain and keep the number of the Garfield and Arthur and Lowe vote? (Contestee objects to the leading character of this question.)

Answer. There was.

Q. What was your part in carrying out such agreement?—A. I don't understand you. What did I do is your meaning?

Q. Yes, sir. I mean what did you do in endeavoring to ascertain the number of Garfield and Lowe votes?—A. I was placed around near the window, in front of the win-

dow, and remained there all day and taken the number of tickets as the men marched to the polls, and put them in as they marched two by two to the polls and voted. I stood where I could see along the line and see that the men carried the ballot, as the resolution was passed, without putting their hands in their pockets.

Q. Were these men whom you were to see and did see so carry their ballots the same men whom Wade Blankenship and others had distributed the ballots to?—A. They are.

Q. Did you put down in any way the number of men that you saw come to the polls having received ballots from Wade Blankenship and others and deposited them?—A. I did.

Q. How did you put down the number; in what way?—A. Marked them on a piece of paper and made a tally of it; five in a tally.

Q. Have you now in your possession that paper?—A. I have.

Q. Please produce it. (Witness produces paper.)

Q. File that paper with your deposition, having the stenographer mark it Exhibit No. 1, to identify it.

EXHIBIT NO. 1.

VVVVVVVVVVVVVVII.

A. I have done so.

Q. How many voters does this paper show you kept account of?—A. Sixty-six; it is sixty-seven this paper shows I kept account of.

Q. How many of them were colored men?—A. Sixty-six.

Q. Who was the other one?—A. A white man; not personally acquainted with him; they say his name was Mr. Wm. Jones.

Q. Why did you put his name on the list?—A. As he voted for Mr. Lowe.

Q. And made it known, did he not, that he was so voting?—A. He did.

Q. Were you present at the meeting of the colored men held after they learned that only forty-seven votes were counted at box number two for Colonel Lowe?—A. I was.

Q. Was or not a list of men who claimed that they had voted for Colonel Lowe made out at that meeting?—A. There was.

Q. Were or not the men whose names appeared on that list the same men of whom you kept the count by tallies?—A. Yes, sir. (Record, pages 243, 244.)

On cross-examination he said:

Q. It is true, then, is it not, that all you know about how people voted at Meridianville precinct is this: First, that you, while standing off some twenty or thirty feet, checked off 67 marks as you saw 67 men go up and put in their ballots, and that afterwards, at a club meeting, 66 men gave in their names and said as they gave in their names that they voted for Lowe?—A. I saw the tickets distributed, and as they marched to the polls and handed them in I marked them down. (Record, page 247.)

The reason why these colored men passed the resolution that they would hold their ballots openly when they walked up to vote is explained by this witness:

Q. I wish you would give the full reasons that induced the colored men to pass the resolution and to act upon it by holding their tickets from their bodies, without putting their hands in their pockets, as they approached the polls and deposited them.—A. It had been said throughout our neighborhood that the colored people would tell each other that they would vote one ticket and sell themselves to the Democrats, put their hands in their pockets and change tickets before getting to the polls. They said it was understood among them that they intended for everybody to see that this shouldn't be, by keeping their hands from their body; they shouldn't have the privilege of making that report. They would keep their hands from their body and it could be seen by everybody.

Q. After what election was it that Democrats said that colored people sold out in that way?—A. It has been said all the time, but more so since the August election. (Record, pages 247, 248.)

Another colored man, named Blankenship, swears that he distributed tickets to 66 colored men; that he saw them openly vote the ticket for Garfield and Lowe which he gave them. (Record, pages 232, 233.) These are the same men that John Wesley swears he saw vote for the contestant. (Record, page 244.)

Felix Forbes, the United States supervisor, testified as follows:

Q. Did you not at the beginning of the count occupy a position toward the inspector who was calling out the ballots so that you could have seen the names upon the ballots?—A. Yes, sir.

Q. Did he or not change his position so that you couldn't see the names?—A. Yes, sir; he changed from the position he first taken. He was inclined this way; he changed it.

Q. Did he or not make such change in his position that from where you were sitting you couldn't see or read any of the ballots?—A. No, sir; I couldn't see them.

Q. The position that he occupied when he first commenced calling the ballots, could you have not, by endeavoring to do so, by leaning forward, have seen them?—A. Yes, sir; I could have seen them.

Q. How did it happen at that box that Wm. M. Lowe got 18 votes less for Congress than the Garfield Presidential electors received?—A. I couldn't say.

Q. Give your best judgment and opinion as to how it occurred.—A. Well, my honest opinion is that he got the votes, and they were not called for him by the inspectors.

Q. Were there not living in that precinct eighteen voters who voted at box number 2 who were known as supporters of Garfield, and yet desired to support Joseph Wheeler for Congress?

(Contestee objects.)

A. I don't believe there was.

Q. Who now has possession or who took possession after the close of the election of the ballots, box, and poll-lists at that box?—A. Truitt. (Record, page —.)

In addition to the above, the voters themselves were called to testify, and 55 did swear that they voted for contestant. The result of this evidence of outright and open fraud in the count must be to reject this box. The returns being successfully impeached, contestant very properly relies upon the direct testimony of the voters themselves, which clearly entitles him to 55 votes at this box.

LANIER'S PRECINCT.

At this precinct, as at Meridianville, all the State officers, sheriffs, and clerks were ardent partisans of the contestee; the contestant had no friends among them. The poll-list shows that 188 persons voted at this box. Yet, the inspectors, in defiance of law and mathematics, counted for contestee 142 votes and for contestant 57 votes, making 199 votes, or 11 more ballots in the box than names on the poll-list. The blundering fraud is apparent on the face of the returns.

The inspectors certify that on counting the ballots after the election there were 11 more ballots in the box than were names on the poll-list, and that they deducted 2 Republican ballots and 9 Democratic ballots, because they were found folded together. But the certificate of the probate judge, also a partisan of the contestee, shows the vote cast and counted at this box as follows:

"Ballots counted for Wm. M. Lowe, 56; ballots counted for Joseph Wheeler, 142."

If this be the truth, there must have been not only 199 ballots, an excess of 11, but there must have been 210 ballots, an excess of 22 ballots. The fact, however, remains that only 188 names are upon the poll-list, and that, therefore, only that number of voters could have legally voted and only that number of ballots could have been honestly counted. The inspectors, nevertheless, after deducting 11 votes in excess of the poll, return 57 for the contestant and 142 for the contestee. Who can give this return a fair and honest explanation?

But the show of fraud on the face of the returns is made apparent, if not conclusive, by the evidence that the box was stuffed in the interest of the contestee, and the integrity of the election at that poll substantially destroyed.

JOHN HERTZLER testified:

Question. What is your occupation and where do you live?—Answer. Well, I live

in this county ten miles south of this place—Lanier's precinct, in Madison County, Alabama.

Q. How long have you lived there?—A. Eleven years, sir.

Q. Where did you come from when you moved there?—A. I came from Clarke County, Ohio—Springfield, Ohio.

Q. Is it not true that you have purchased and now own forty to fifty thousand dollars' worth of real estate?—A. I don't know what it might be worth, but I own sixteen hundred acres of land there.

Q. Were you one of the inspectors of the election at Lanier's precinct, November 2, 1850?—A. Well, I was appointed to be there as, I believe, overseer—supervisor of election.

Q. What time did you get to Lanier's, the polling place?—A. I went there before six o'clock in the morning.

Q. At what time were the polls opened at that box?—A. The polls were opened at about half past eleven, or, probably, near twelve the voting commenced. It was eleven before there was any voting done; there was some dispute or some trouble as to the registrar.

Q. Who were the inspectors who held the election at that box?—A. The inspectors were William F. Baldridge, William M. High, and Frank Horton.

Q. William F. Baldridge and William High are white men and Frank Horton is a colored man?—A. Yes, sir.

Q. What are the politics of William F. Baldridge and William M. High and Frank Horton; were they or not Wheeler men and Democrats?—A. To the best of my knowledge, they are; yes, sir.

Q. Who were the clerks of the election at Lanier's box?—A. Burwell C. Lanier, jr., and James McDonnell.

Q. What are the politics of these two clerks?—A. I believe they were Wheeler men.

Q. Who was the returning officer at Lanier's box?—A. Burwell C. Lanier, sr., the old gentleman.

Q. He was a Wheeler man and a Democrat, was he not?—A. Yes, sir; to the best of my knowledge.

Q. Did the registrar of that precinct attend the polls on the morning of the election?—A. No, sir.

Q. Who was appointed in his stead?—A. Archie McDonnell, sr.

Q. Is it not true that Archie McDonnell, sr., was a Democrat and Wheeler man?—A. Yes, sir.

Q. Is it not true that Lanier was a new precinct or voting place?—A. Yes, sir.

Q. This is the first election held there, is it not?—A. Yes, sir.

Q. You say that the registrar of that precinct didn't attend that morning; what is his name?—A. His name was Blunt Atkins.

Q. Is it not true that he is known as a Democrat and Wheeler man?—A. Yes, sir.

Q. Did he come during the day?—A. He came about two—two o'clock in the afternoon. He was sent for.

(Record, page 174.)

* * * * *

Q. How did you understand he was engaged during the morning of the election?—A. Well, I understood that as men came there (hands from their plantation) every one asked, "Did you see anything of Blunt; is he coming?" And they answered invariably, "He has gone hunting."

(Contestee objects to eliciting hearsay from the witness, and to answering questions which were at best merely a point of hearsay.)

Q. When the voting began did or not the inspector, William F. Baldridge, challenge any votes?—A. Yes, sir.

Q. How many did he challenge?—A. Well, I judge he challenged about three out of five.

Q. Was these men whom he challenged known as Lowe men or Wheeler men?—A. Well, that I couldn't just say, whether they were or not, but they were judged to be Lowe men.

Q. You say you think he challenged about three out of five?—A. Yes, sir; I am satisfied he challenged that many up to the time that Atkins came.

Q. When he would challenge a voter what would be done?—A. He would simply read them the oath that was there.

Q. Did Mr. Baldridge do the reading himself?—A. Yes, sir.

Q. Did he read rapidly or very slowly?—A. He read very slowly, sir; very tedious.

Q. How long has Mr. William F. Baldridge been living in that precinct?—A. He has lived there eleven years—just as long as I have.

Q. Isn't it true that he is well acquainted with the people living in that precinct?—A. Yes, sir; I think he is as well acquainted as any man there.

Q. Were these men that he was challenging strangers to him?—A. I think they were all well known to him.

Q. It is true, is it not, that Mr. Baldridge is a planter in that precinct, and well acquainted with the people of that precinct?—A. Yes, sir; those that he did not challenge were such that, for instance, the Laniers, or Mr. James McDonnell, one of the clerks, or myself, could recommend.

Q. Were you present at the time the ballots were received?—A. Yes, sir.

Q. Did or not any voter come up to the polls and hand to the inspector six or seven ballots twisted or folded together?—A. No, sir; I paid particular attention to that.

Q. If a voter had brought a roll of ballots as I have described and handed them to the inspector, would you not have noticed it?—A. Yes, sir.

Q. After the polls were closed did the inspectors begin to count the vote immediately?—A. No, sir.

Q. Did the inspectors remain at the house where the election was held, with the ballot-box?—A. No, sir.

Q. What did they do and where did they go?—A. Mr. Baldridge went home, Mr. High and Frank Horton staid there. I took charge of the box.

Q. Where was the election held; in what house?—A. It was held in the outhouse or rear end of the smith-shop.

Q. After the polls were closed was the ballot-box kept in that house?—A. No, sir.

Q. Where was it carried?—A. It was carried to Lanier's store, close by.

Q. Who carried it there?—A. William M. High.

Q. Did you and the other inspectors go to the store at this time?—A. Yes, sir.

Q. Did the inspectors all go into this store?—A. No, sir.

Q. Who went into the store?—A. William M. High went into the store.

Q. And carried the box in?—A. Yes, sir.

Q. Where, then, did Mr. Baldridge go?—A. He went home.

Q. Where did Horton go?—A. He staid there at the store.

Q. Where did you go?—A. I staid there at the store for a while.

Q. You and Horton, then, staid there, and Baldridge went home; where was High at this time?—A. He came out of the store again and was with us for a while; he had gone into the store and deposited the box, and came back again.

Q. Did you or Mr. High go to supper?—A. Yes; we went to supper after that.

Q. Who was left at the store with the ballot-box?—A. John Lanier.

Q. Is he the storekeeper?—A. Yes, sir.

Q. He was not an officer of the election, was he?—A. He was, I believe; I think he was a marshal that day, appointed by the Government.

Q. Is it not true that this John F. Lanier was a pronounced Democrat and a Wheeler man?—A. Well, I could not say as to that; his politics were rather mixed; but I rather think he was then, at this last election, a Democrat.

Q. How long did you and Mr. High remain away from the store and at supper?—A. I expect it was nearly two hours; were away a long time.

Q. Did or not you and Mr. High go to the store after supper to get the ballot-box?—A. Yes, sir.

Q. Who went with you?—A. Mr. Burwell Lanier, Mr. John Lanier, and Mr. Clint Lanier.

Q. Who unlocked the store?—A. John Lanier.

Q. Did you get the box?—A. Yes, sir.

Q. Where was it then carried?—A. It was then carried by Mr. High to Mr. Burwell Lanier's house, in his parlor.

Q. And then in his parlor did you proceed to count the vote?—A. Yes, sir.

Q. Was William F. Baldridge then present?—A. Yes, sir.

Q. Did he or not rejoin you at the store when you went for the ballot-box?—A. He did.

Q. What kind of a box was that ballot-box?—A. It was a little wooden box, a little candy-box formerly, with a lid on top that could open and shut by sliding the top in grooves.

Q. Did it or not have upon it any lock?—A. No, sir; it didn't have any lock.

Q. Was there or not a hole cut in it for the purpose of putting in ballots?—A. Yes, sir.

Q. When the ballot-box was left at the store, was it or not in such a condition that the top could have been pulled off?—A. It could have been very easily pulled open; that is, the lid could.

Q. When you proceeded to count the ballots in Mr. Lanier's parlor, who was present?—A. The inspectors of the election and the clerks were present, and there was also present another colored man, Alexander Kelley, and myself.

Q. Was the box then opened in the presence of these men?—A. Yes, sir.

Q. And the inspectors proceed to count the vote?—A. Yes, sir.

Q. Were or not any ballots found in that box rolled or twisted together?—A. Yes, sir; there were.

Q. What kind of ballots were they—Wheeler ballots or Lowe ballots?—A. Wheeler ballots.

Q. How many were rolled in a bunch?—A. Well, to my certain knowledge there were two bunches, they then were that were. In one there were six; in one there were seven; there were several that were two or three; there were several other bunches that had two or three in them.

Q. These tickets so in bunches were all Wheeler tickets, were they not?—A. Yes, sir; two bunches were Wheeler tickets.

Q. You mean the two bunches, one containing six ballots rolled together and the other containing seven ballots rolled together?—A. Were all Wheeler ballots; yes, sir.

Q. Who took the ballots out of the box and called them out to the clerks?—A. Mr. Baldridge took out the greatest part of them, and Mr. High took out some of them.

Q. Were or not this bunch of six tickets and this bunch of seven tickets all counted for Wheeler?—A. They were all counted.

Q. After the ballots had been counted how did the number of ballots compare with the number of names on the poll-list?—A. There were eleven more ballots than there were names.

Q. Who cut the hole in this ballot-box through which the ballots were put into the box?—A. I did.

Q. How large was it?—A. Half an inch by an inch.

Q. Were all the ballots which were in the box counted?—A. Yes, sir.

Q. And then it was ascertained, was it not, that the number of ballots counted exceeded by eleven the number of names on the poll-list?—A. Yes, sir.

Q. Then what was done for the purpose of reducing the ballots so as to make it correspond with the number of names on the poll-list?—A. There were then nine of those ballots were then counted to the Republican side and two to the other.

Q. You mean that they deducted nine votes from the Democratic side and two votes from the Republican side?—A. Yes, sir.

Q. And in that way made the number of ballots correspond with the poll-lists?—A. Yes, sir; that is how it was done.

Q. This process of making the number of ballots correspond with the poll list took from General Wheeler and the Democratic ticket nine ballots, and took from the Republican ticket and Colonel Lowe two ballots?—A. Yes, sir.

Q. Were not all of the inspectors present in the counting of the votes Wheeler men?—A. Yes, sir.

Q. What reason did they give for taking nine ballots from Wheeler and two from Lowe for the purpose of equalizing them?—A. They gave as a reason that Wheeler's majority was so much the greater.

Q. The vote had been counted at this time so as to ascertain that his majority was greater?—A. Yes, sir.

Q. They gave no reason except this?—A. No, sir.

Q. Who proposed that the vote should be equalized in this way?—A. Well, I couldn't positively say who proposed it. They asked me what I thought about it. I told them that I thought they ought to be pretty lenient to Colonel Lowe, as those two wraps that were in there were Wheeler votes.

Q. And they made this concession without complaint?—A. Yes, sir.

Q. Are you or not well acquainted with the voters of Lanier's precinct?—A. Well, I am not very well acquainted with them. As a general thing they were nearly all colored voters.

Q. It is true that you were well acquainted, is it not, with the white voters of that precinct, and with many of the colored voters?—A. Oh, yes, sir.

Q. From your knowledge of the voters of that precinct, and their politics, judging from their expressions before the election, and from all means of knowledge that you have, how many Wheeler men reside in and voted at that precinct?—A. Well, I did think, and think so yet, that 40 would have been an extremely high estimate of them.

Q. Did or not the inspectors, in your hearing, express surprise at the result after the vote was counted?—A. Yes, sir; all did.

Q. Did or not the electors who were best acquainted in the precinct express great surprise at the result?—A. Yes, sir.

Q. How many white voters are at the precinct?—A. About twenty.

Q. I shall now read to you the poll-list of Lanier's precinct kept by the clerks of the election on November 2, 1880, and I'll ask you to keep a tally of the names whom you may know to be those of whose men as I call them, and then answer how many white men are recorded upon his poll-list?—A. Sixteen is what I recognize.

Q. Were the ballots as they were received put through this hole the top of the box which you have described?—A. Yes, sir.

Q. Referring to the bunches of tickets, 6 in one bunch and 7 in another, which you have described as have been found in the box when it was open, could those bunches or rolls of ballots been passed through the hole in the box which you have described?—A. No, sir; not in the form which they were found in the box.

Q. According to your best judgment, how many Wheeler ballots were cast that way?

(Contestee objects to questions asking for the judgment of the witness as to how many ballots were polled.)

A. Well, I judged then, and do still think, that there was—that fifty would have been the whole amount.

Q. Isn't your best judgment that fifty would have been a liberal estimate of the entire strength of General Wheeler at that box?—A. Yes, sir.

Q. How do you account for the fact that when the ballots were counted out that only fifty-six ballots for Colonel Lowe, and one hundred and fifty for General Wheeler?—A. I cannot account for it only by my judgment.

Q. Give me your best judgment as to how it occurred.—A. My judgment is that the ballot-box had been tampered with while we were in to supper.

Q. Were these clerks, Burwell C. Lanier, jr., and James McDonnell, competent clerks?—A. Yes, sir; I think they were.

Q. Are they not young men of good education?—A. Yes, sir.

Q. And who write well?—A. Yes, sir.

(Record, page 176-'77.)

On cross examination by the contestee he said:

Q. You state, I believe, that the ballot-box was carried to the store and you were along with it?—A. Yes, sir.

Q. It was then carried in the store, and before you left it was locked up in a room in the store?—A. It was carried in the store, but where it was put in the store I didn't know until I saw it taken out. It was carried in the store.

Q. When you saw it taken out, it was taken out of a room that had a lock on it, was it not?—A. Yes, sir.

Q. It was taken out by Mr. High, was it not?—A. Yes, sir; I was by when he took it out.

Q. Do you understand Mr. High to have the key to that room?—A. I expect that he had the key from the fact that he went there by the door and unlocked it. Where he got the key I don't know. I know he unlocked the door and had the key in his hand, and just reached in his hand in the dark and took the box; took it on his arm, and we went up to the house. When I say "in the dark" I didn't mean that he was in the dark, but that the room that he got the box out of was dark.

Q. This John F. Lanier that was in the store was a marshal at the election that day, was he not?—A. Yes, sir.

Q. This man John F. Lanier, who was a United States marshal, was the only man left in the store, was he not?—A. Yes, sir. Well, he had some customers in the store; the store belongs to him. He came to supper, too, but he didn't go with us; he came up when we were nearly through supper.

Q. When you returned from supper it is true, is it not, that you went down with Mr. John F. Lanier, and you saw him open the store door? Was anybody in there when you opened it?—A. No, sir.

Q. Then you saw Mr. High go to the store-room and unlock that door, and take out the ballot-box?—A. Yes, sir.

Q. And then you went with Mr. High to Burwell Lanier's house?—A. Yes, sir.

Q. And there, in the presence of the inspectors, and in the presence of the clerks and a colored man by the name of Kelly, in addition to the man Frank Horton, the inspector, the ballots were counted?—A. Yes, sir.

Q. Nothing could have been done with the ballot-box while going from the store to the house?—A. No, sir; there was nothing done there.

Q. It is true, is it not, that the only place that any tampering could have been done to the ballot-box was while it was locked up at the store?—A. Yes, sir; that is the only time.

* * * * *

Q. What makes you think that the colored man Frank Horton, whom you thought was a Republican up to November the 2d, is now a Democrat?—A. Up to November 2 I didn't know Frank Horton at all. It was on that day he was inspector, and why I thought that day he was a Republican was why I knew the others were Democrats, and I thought they put him there as a Republican inspector.

Q. What has made you think since that he was a Democrat?—A. Simply that I have heard of him being accused of stuffing votes into that box. When I said it would be very strange that Frank Horton, a Republican would stuff the box with Democratic tickets, they said that he was a red-hot Democrat, and from that what I learned that he was a Democrat.

Q. It is true, is it not, that Frank Horton cannot read or write?—A. I do not think he can. I did not see him take any part; he just sat there—did not do anything.

William H. High, one of the inspectors at Lanier's, and witness for contestee, testified :

Q. When you put the ballot-box in the side room at the store and went to the house what persons did you leave about the store?—A. I left John F. Lanier and several negroes. John F. Lanier came on to supper shortly after we got there, and was there with us. (Record, page 557.)

Extract from deposition of Lowe Davis:

Q. What time did you get to Lanier's on the day of the election?—A. I believe it was about eight or half past eight o'clock.

Q. Was the register of that precinct, Mr. Madkins, there?—A. No, sir; he was not.

Q. Did you and others make any effort to get the polls opened? If so, state fully what you did and what occurred in that respect, telling who assisted you, and what assistance they rendered, and what obstructions, if any, were offered by the inspectors, and how it was you succeeded in getting the polls opened.—A. Upon arriving we found out that Mr. Madkin, the register appointed, was not present; we waited for him some time, and finally concluded that he was not coming at all; we then went to where the inspectors intended to hold the election and requested them to appoint another registrar. Mr. Baldridge, one of the inspectors, declined to do so, stating that he had no authority. Mr. R. H. Lowe then procured a copy from Mr. Clint. Lanier of the Code of Alabama, and read the law in regard to the appointment of a registrar from that; he (Baldridge) still objected, though stating that he was a States-rights man, and would not go by the United States statutes. The construction that he put upon the code was not the one that he put upon it. He did not think that he had any authority whatever to appoint another registrar or an assistant registrar. Mr. Burwell C. Lanier, sr., then insisted to quite an extent; and, finally, after Mr. High and Horton, a colored inspector, had consented, Mr. Baldridge appointed Mr. McDonnell, an old gentleman about seventy years of age, as assistant registrar.

* * * * *

Q. When the polls were finally opened after the registrar was appointed, did the inspectors, or any one of them, make any objection to Mr. Archie McDonnell, sr., having assistance in writing out the certificates of registration?—A. Mr. Baldridge did.

Q. Did he or not claim that Mr. McDonnell should write them all out himself?—A. He did; we saw that it was impossible for Mr. McDonnell to do that; at least we thought so, as there were no blanks furnished by the inspectors or in possession of the registrar.

Q. And did some of you insist upon helping Mr. McDonnell?—A. Yes, sir; we did. (Record, page 190.)

* * * * *

Q. Did you or not have an opportunity to observe the manner of the distribution of the ballots to the colored voters and who was distributing them?—A. I did.

Q. Who did you see distributing ballots, and who did you see, if any one, preserving a tally or score of the voters who received the ballot and went forward to vote?—A. I frequently during the day went down to where the negroes were going in to vote. I saw at that place Pope McDaniel, I think his name is, keeping a tally-sheet of the men who voted for Lowe, and also another colored man distributing tickets.

Q. Who was this colored man distributing tickets?—A. I have forgotten his name; Wallace something.

Q. Have you or not seen this other man who was distributing tickets here to-day, being examined as a witness?—A. Yes, sir.

Q. Wasn't his name William Wallace?—A. I think it was, sir.

Q. Isn't he the man who is sometimes called Wallace Toney?—A. Yes, sir.

Q. You recognize the man as the man who was distributing the tickets?—A. I do.

Q. Was there or not any action on the part of the inspectors as the voters went up to deposit their ballots that indicated a disposition to delay their election?—A. There was.

Q. State fully what occurred in that connection.—A. The electors, after they had received their certificates of registration, would go to the polling place, and every one that voted while I was present, and I saw a great many vote, were challenged, to the best of my knowledge.

Q. How near were you to the inspectors, looking on, at the time you saw these men challenged?—A. About thirty yards; probably not that far.

Q. What could you see?—A. I could see the elector walk to the box or where they were polling the votes and offer his ticket, holding it in his hand; some would remain there for two or three minutes with the inspectors. I heard them swear a good many of them.

Q. There seemed to be some delay in the receiving of all the ballots that you saw received?—A. Yes, sir.

Q. Did you or not examine this tally-sheet or score that you say Pope McDaniel was keeping of the ballots that Wallace Toney was distributing?—A. I did, just before I left, between three or four o'clock, I think.

Q. What was its condition as to the number of votes at the time you examined it?—A. 120 or 130 tallies upon the sheet or a piece of pasteboard which he held in his hand.

Q. What did you understand each one of these marks or tallies to represent?—A. A vote for Wm. M. Lowe.

Q. What time did you say you left Lanier's for Huntsville?—A. Between three and four o'clock.

Q. Alfred McColley could have come and voted after you left, could he not?—A. Yes, sir.

Q. Were there or not any white voters at Lanier's precinct known to be Lowe men?—A. Mr. John Allen was an avowed Lowe man. Since the election I have seen Mr. Bill Allen, who also told me that he voted for Lowe. I have heard that there were others.

Q. Both the gentlemen you have named voted at that precinct?—A. Yes, sir; at Lanier's precinct.

Q. If there had been a majority of the colored men who were at Lanier's precinct who were for General Wheeler on the day of the election, would you or not have been able to discover the fact that there was a number of them for him during the day by your mixing with them and your conversation with them?—A. I think I would, sir.

Q. What did you discover to be the sentiment of that body of colored voters?—A. They all desired to vote for Garfield, Arthur, and Lowe.

Q. Did you or not offer to distribute Lowe tickets yourself?—A. I did, sir.

Q. What was said to you by the leading colored men in reference to your offer?—A. That they had procured Lowe tickets and were very desirous of keeping an accurate account of the votes polled for Lowe; that the electors present had confidence in them and they would prefer to distribute them, as they had procured the Republican ticket with Lowe's name on it—the tickets the electors desired to vote.

Q. Didn't you understand in that conversation that arrangements had been made for William Wallace, sometimes called Wallace Toney, to distribute the ballots, and for a tally to be kept by Pope McDaniel?—A. I did, sir.

Q. And you saw, did you not, that plan while it was being executed?—A. I did. (Record, pages 191, 192.)

Richard H. Lowe, attorney-at-law, who accompanied Lowe Davis to Lanier's, corroborates him fully. He describes specifically the efforts made by Lowe's friends to get the polls opened, and the stubborn resistance made by Wheeler's supporters. (Record, page 157.) Lowe's friends expected a large majority at that box, and Wheeler's friends thought that twenty votes would be as many as he would get there.

(Record, page 158.)

Pope McDaniel, the secretary of the Garfield Club, aided by William Wallace, distributed the tickets and saw 155 ballots cast for Lowe. (Record, pages 206-7.) His deposition is perfectly clear and consistent. He kept a tally-list of the ballots so cast for Lowe. (Record, page 208.) He is corroborated by Lowe Davis, as heretofore shown, and by William Wallace, who says distinctly that 155 men received the Lowe tickets and walked to the polling place and deposited them; that each voter carried the ballot so that witness could see it. (Record, page 216.) This precaution was taken on account of the frauds at the Triana box in August. (Record, page 216.)

Lanier's precinct had been since August taken from the Triana precinct. For an account of the August election at that box see the deposition of United States Marshal Joseph H. Sloss. (Record, pages 91-2-3.)

The depositions of Pope McDaniel and William Wallace should be carefully read in connection with the investigation of Lanier's box. The former is in record, page 206 to 215; the latter will be found on pages 215 to 231.

Under these circumstances, the contestant properly and legally called the voters themselves to testify as to how they had voted, one hundred and twenty-eight of whom came forward and swore that they voted for

contestant. We think that contestant should have the benefit of these votes.

CAVE SPRING.

The witnesses for contestee admit that contestant is entitled to at least ten more votes at this box than are given him by the inspector's returns. (See record pages 964, 986, 467.)

Carver C. Hipp, on an examination as contestee's witness, testified :

Q. State whether you were present at the polls and voted at the Cave Spring's box at the Presidential and Congressional election on the 2d day of November, 1880?—A. I was present at the polls and voted at said election.

Q. State whether or not there was a large colored vote at the Cave Spring's box on said day, and how many negroes voted the Democratic ticket?—A. There was a very large colored vote at Cave Spring's box, and there were *only three negroes* who voted the Democratic ticket at said box.

Q. For whom did the colored people vote for member of Congress on that day?—A. They voted solidly for Wm. M. Lowe, with the exception of three. (Record, 964.)

Edwin G. Hendrix, a witness for contestee, on his examination by contestee's attorney, with the poll-list of this box in his hands, gave the names of *sixty-four* colored men who voted at this box November 2, 1880. (Record, 986.)

Mr. Hipp says that all of these colored men, except three, voted for Lowe. Deducting three from sixty-four would leave sixty-one colored men who voted for Lowe.

The inspectors, all of whom were Wheeler's supporters, by their returns give Lowe only *fifty-one* votes. (Record, pages 467 and 986.)

Conceding that Lowe did not receive the votes of a single white man, if these witnesses tell the truth, and we do not on this point question their veracity, Lowe is entitled to ten more votes than the inspectors return for him.

The deposition of Mr. Hipp is a fair sample of the evidence taken, *ex parte*, for the contestee.

We find, therefore, that the following additional votes should be counted for contestant:

| | Votes. |
|--|-----------|
| Lanier's (Record 1263-1340)..... | 128 |
| Meridianville, No. 2 (Record, 231, 241, to 259)..... | 55 |
| Cave Spring (Record, 964, 986, 467)..... | 10 |
| | <hr/> 193 |

In addition to the 601 rejected votes.

THE CASE OF CONTESTEE.

In reply to the foregoing statement of law and fact, the contestee puts in a plea in the nature of confession and avoidance. He seeks to show that many electors who voted for contestant did not have the legal qualifications; that they were minors, or convicts, or non-residents, or were not registered; and that "many hundreds of colored voters who desired to vote for contestee were prevented from so doing by fear of *ostracism* and apprehension of harm to their persons and property, and even the destruction of their houses and property by fire."

In support of these allegations, the contestee has adduced a great mass of testimony, and presented briefs of extraordinary length, but has in our opinion failed to sustain his case. This testimony is almost altogether irrelevant, and much of it frivolous and generally secondary, hearsay, and illegal. His proofs fail to sustain his allegations.

In regard to minors and non-residents, the mere statement of a witness that an elector is one of this class seems to be the sole reliance of the contestee. This is not sufficient. The witness must give facts to justify his opinion.

In regard to convicts, the record of conviction is the best evidence, and the only evidence to be accepted by the House, unless the loss or destruction of that record is shown. In no instance has the contestee produced the record or sought to account for its absence. We think it is clear, also, that the contestee has not made such a showing in regard to the Courtland boxes as would authorize us in rejecting the same under the authorities. "It must appear that the conduct of the election officers has been such as to destroy the integrity of their returns," &c. (McCrary, page 229), and we are not able to so find in this instance upon the proofs.

REGISTRATION.

In regard to the registration of voters, the facts as shown by the testimony do not sustain the claims made by the contestee. His testimony does not establish what he alleges it does. It is largely secondary and of a hearsay character at the best. The fact is that in many instances where he claims registration was not made, it was made, and in few instances, if any, does he establish the identity of the voter wherein he claims non-registration.

But whatever may be the facts upon this question of registration, we are clearly of the opinion that the constitution of Alabama does not make registration an absolute condition or prerequisite of voting, nor do the statutes of the State.

The provisions of the Alabama constitution (art. 8, sec. 5) in regard to registration is subject to two constructions: one making registration constitutionally essential to voting, and the other making registration essential only "*when it is so provided*" by law. The latter construction is the one taken by contestant. It is the plainest and most satisfactory construction that can be derived after giving full force to all the words in the section. On the contrary, the construction given by the contestee would eliminate the words "*when it is so provided*," and make the section read as follows:

The general assembly may, when necessary, provide by law for the registration of electors throughout the State or in any incorporated city or town thereof, and no one shall vote at any election unless he shall have registered as required by law.

This reading of the section, with the words "*when it is so provided*" eliminated, is the construction given by the contestee to the entire section. But these words cannot be properly eliminated. They stand out in the section to qualify and limit its meaning. They must be given due consideration. They declare, in effect, not that registration shall be a prerequisite for voting, but that *when the general assembly shall so provide*, no person shall vote unless registered: meaning that the legislature may make registration a prerequisite for voting, and that when "*it is so provided*" no person shall vote without being thus registered.

But the legislature has not seen fit to make such provision. Registration is not a prerequisite. It is not compulsory. It is not even put down as one of the qualifications of an elector.

The registration law of Alabama contains the following provision:

§ 233. *Registration on election day, and certificate.*—The assistant registrars shall be present at the voting precinct, or ward, for which they are respectively appointed, on

the day of election, to register such electors as may have failed to register on any previous day in their precincts or wards, which registration must be done, in every respect, according to the form prescribed; and the assistant registrar shall furnish to each elector who may register on the day of election a certificate of registration, which shall be in the following form:

I, _____, assistant registrar, do hereby certify that _____ has this day registered before me as an elector.

(Signed)

_____,
Registrar.

Which certificate, signed by the registrar, shall be sufficient evidence that such elector is registered; and in case such assistant registrar, for any cause, is unable to attend, or there be a vacancy in the office of assistant registrar for such precinct or ward, the county registrar shall appoint some competent person as assistant registrar for that day; and if no appointment be so made by 10 o'clock of that day, then the inspectors of election may appoint an assistant registrar, who may qualify and act as such for that day; but this section shall not apply to incorporated towns or cities having a population of more than five thousand inhabitants, except as is hereinafter provided by this chapter.

Every voter that complied with this condition complied with the requirements of the registry law of Alabama, and was as much entitled to vote as though he had been registered days before the election. In the face and eyes of a such provision, and in the absence of such proof as would show that the officers who had registration in their charge had deliberately violated their oaths, how are we to assume that this provision of law was not complied with in all cases of voters not embraced in the general registry? As to the presumption that the officers of the law charged with a duty performed it, we cite McCrary on Elections, p. 231; to the election case of Finley vs. Bisbee, vol. 1, third session, Forty-fifth Congress, House Reports.

We conclude, therefore, and we think rightfully, that the votes which the contestee claims should be thrown out on account of alleged non-registration cannot be deducted from contestant's votes; and, besides, that they could not be taken *pro rata* from the whole vote cast, because there is no evidence which establishes definitely and identically for whom they voted. It was held in Curtin vs. Yocum, 2d vol. House Reports of Forty-sixth Congress, where an elector votes without challenge, his vote cannot afterwards be rejected because his name may not be found on the registration list, but that it will be presumed the officers of the election did their duty till the contrary is proven.

We therefore find and report that the contestant was fairly elected, and that he was wrongfully counted out. We submit the following table of results:

Lowe has 12,765 votes returned for him, 601 rejected ballots proved for him, 193 additional ballots proved for him; total, 13,559; 103 votes which must be deducted on account of Meridianville and Lanier's polls being rejected for fraud.

| | |
|----------------------------------|--------|
| Lowe's actual vote..... | 13,456 |
| 103 | <hr/> |
| Wheeler's vote as returned | 12,808 |
| Deduct Meridianville | 57 |
| Deduct Lanier's..... | 142 |
| | <hr/> |
| | 199 |
| Wheeler's actual vote..... | 12,609 |

FINAL.

| | |
|----------------------------|--------|
| Lowe's legal vote | 13,456 |
| Wheeler's legal vote | 12,609 |
| Lowe's majority | 847 |

We therefore recommend the adoption of the following resolutions:

Resolved, That Joseph Wheeler is not entitled to a seat in this House as a Representative in the Forty-seventh Congress from the eighth Congressional district of Alabama.

Resolved, That William M. Lowe is entitled to a seat in this House as a Representative in the Forty-seventh Congress from the eighth Congressional district of Alabama.

VIEWS OF MR. RANNEY.

The records and briefs in this case are very voluminous. Much of the former is composed of matter which is personal in its nature and wholly immaterial. It has served to impose unnecessary labors upon the committee, and to prevent an earlier report to the House. The contest really presents but two substantial issues.

The first issue related to about 525 ballots cast for contestant and rejected by the inspectors, and which he now contends should be counted for him. The second relates to votes cast by alleged non-registered electors.

The official vote, as returned to the secretary of state, and upon which the certificate was issued to contestee, was as follows:

| Counties. | Joseph Wheeler. | Wm. M. Lowe. |
|------------------|-----------------|--------------|
| Colbert..... | 1,237 | 1,237 |
| Franklin | 611 | 400 |
| Jackson | 1,948 | 1,680 |
| Lauderdale | 1,709 | 1,822 |
| Lawrence | 1,517 | 1,903 |
| Limestone | 1,569 | 1,704 |
| Madison | 2,825 | 3,501 |
| Morgan | 1,892 | 928 |
| Total | 12,808 | 12,765 |

Wheeler's majority, 43 (Record, page 470).

The official vote at each precinct in each county is shown by the proper certificates found in the Record, pages 464-69.

It is proved clearly that 521 more ballots were cast for contestant and rejected by the inspectors in fifteen precincts, and that 8 more were cast for contestee and rejected in other precincts for the same reason.

Had these been counted and returned contestant would have had a majority of 470.

Those for contestant rejected were as follows, viz:

| Precincts: | Ballots. |
|-------------------------|----------|
| Huntsville..... | 61 |
| Madison | 33 |
| Owens Cross Roads | 31 |
| Poplar Ridge | 41 |
| Falkville | 97 |
| Decatur | 3 |
| Danville | 42 |
| Elkmont..... | 56 |
| Big Creek | 7 |
| Russellville | 51 |
| Chickasaw..... | 8 |

| | |
|---------------------|-----|
| Courtland | 65 |
| Green Hill | 22 |
| Kash | 2 |
| Meridianville | 2 |
| | — |
| | 521 |

Those for contestee rejected were as follows, viz:

Ballots..

Precincts:

| | |
|----------------------|---|
| At Huntsville..... | 3 |
| At Madison | 1 |
| At Falkville | 1 |
| At Courtlaud | 2 |
| At Mooresville | 1 |
| | — |
| | 8 |

The rejected ballots read as follows:

| FOR ELECTORS FOR PRESIDENT AND VICE-PRESIDENT: | FOR ELECTORS FOR PRESIDENT AND VICE-PRESIDENT: |
|--|--|
| STATE AT LARGE. | STATE AT LARGE. |
| W. L. BRAGG. | JAMES M. PICKENS. |
| E. A. O'NEAL. | OLIVER S. BEERS. |
| DISTRICT ELECTORS. | DISTRICT ELECTORS. |
| 1st District—D. P. BESTOR. | 1th District—C. C. McCALL. |
| 2d District—JOHN A. PADGETT. | 2d District—J. B. TOWNSEND. |
| 3d District—J. F. WADDELL. | 3d District—A. B. GRIFFIN. |
| 4th District—JOHN ENOCHS. | 4th District—HILLIARD M. JUDGE. |
| 5th District—THOS. W. SADLER. | 5th District—THEODORE NUNN. |
| 6th District—J. G. HARRIS. | 6th District—J. B. SHIELDS. |
| 7th District—F. W. BOWDON. | 7th District—H. R. McCOY. |
| 8th District—H. C. JONES. | 8th District—JAMES H. COWAN. |
| FOR CONGRESS—EIGHTH DISTRICT. | FOR CONGRESS—EIGHTH DISTRICT. |
| WILLIAM M. LOWE. | WILLIAM M. LOWE. |

There was no objection as to size or form or kind of paper used.

The ballot on the left hand is what is called the Hancock and Lowe ballot, and the one on the right is the one called the Weaver and Lowe ballot.

The ballots were rejected by the inspectors because they had on them the numerals 1, 2, 3, &c., as would seem from the evidence, which is referred to for the convenience of those who may desire to read it.

At Huntsville the inspectors rejected sixty-one of these ballots (deposition of Thomas W. White, Record, pages 37, 41; W. L. Goodwin, pages 42, 46; Nicholas Davis, 47, 48, 52, 54). At Madison they rejected thirty-three (deposition of T. B. Hopkins, Record, page 130; Lockhart Bibb, pages 137, 139). At Owen's Cross Roads they rejected thirty-one (deposition of G. W. Maples, Record, page 140; W. L. Christian, 143; R. J. Wright, 148). At Poplar Ridge they rejected forty-one (deposition of E. C. Lamb, Record, page 150; Nathan Whittaker, 153). At Falkville they rejected ninety-seven (deposition of W. G.

Smith; Record, page 370; Alfred Gandy, 373, 375). They rejected at Decatur two (deposition of H. A. Skeggs, Record, page 376). They rejected at Danville forty-two (deposition of J. Y. Fergerson, Record, page 382). At Elkmont they rejected fifty-six (deposition W. A. Pinkerton, Record, page 339, 341; A. G. Smith, 343). At Big Creek they rejected seven (deposition of A. C. Witty, Record, page 346, 348; William McCully, 349, 351). At Russellville they rejected fifty-one (deposition of John E. Seal, Record, 394, 396; D. N. Fike, 397). At Chickasaw they rejected eight (deposition of T. C. Walker, Record, page 404). At Courtland they rejected sixty-five (deposition of W. J. Gibson, Record, page 496; W. W. Simmons, 496).

As to Green Hill, see record, p. 1388; Kash, p. 309; Meridianville, pp. 294, 295.

The following-named documents inclosed together in the same envelope were issued and sent to trusted friends by the Democratic executive committee; and the one not signed—called the “yellow circular”—was given to the inspectors just at the close of the polls, and seems to have been heeded and acted upon by them in most of the precincts named above.

[Yellow circular.]

DEAR SIR: As soon as the polls are closed inform the inspectors of the election that the Lowe tickets with Hancock electors on them are illegal. They contain the figures 1st, 2d, &c., designating the district. These are marks or figures which are prohibited by the election laws; see acts 1878-'79, page 72; and all such tickets should be rejected when the votes are counted, after the polls are closed.

(Indorsed :) To be shown only to very discreet friends.

The kind of persons to whom it was intrusted for such use is indicated by the paper with which it was inclosed, which is as follows, so far as now material.

IMPORTANT.

You are specially designated as a person whose influence and ability can accomplish much in the election.

* * * * *

You are earnestly requested to be at the polls before the voting commences, and if any inspectors or managers are absent see that a good Democrat takes his place. This is very important.

* * * * *

By order of the Congressional Comt.

A. J. SYKES,
Chairman.

In some cases telegrams were sent by the same committee to the inspectors to the same effect of the yellow circular. (Record, p. 129.)

In other cases lawyers called in behalf of the contestee, expounded the law, and induced the inspectors to reject the ballots after they had been cast and received.

In one instance the ballots had already been counted, and they were recounted and rejected by reason of the personal influence of a lawyer who called for that purpose and advised this course.

It appears that in other counties and precincts where such influences were not brought to bear, the inspectors counted ballots in the same form, and which were subject to the same objection, to the number of about 3,000, as alleged and proved by contestee. He contends now that they were all illegal and ought not to be counted. Contestant

contends that the influences brought to bear to induce the rejection of the ballots were illegal and fraudulent, and were exerted in the execution of a conspiracy; or, if not, that it was an unwarrantable interference with the judgment and action of the inspectors. This may be so; but if the ballots were illegal and such as should have been rejected, this fact is, perhaps, immaterial.

The fact that such ballots were received and counted when there was no such interference is quite significant as indicative of how they were regarded in other precincts.

WERE THE BALLOTS ILLEGAL?

It is claimed that the rejected ballots were in violation of the following statute of Alabama, as cited and had printed by contestee at the argument:

AN ACT to amend section 274 of the code of Alabama.

SECTION 1. Be it enacted by the general assembly of Alabama, That section 274 of the code of Alabama be amended so as to read as follows:

The ballot must be a plain piece of white paper, without any figures, marks, rulings, characters, or embellishments thereon, not less than two nor more than two and one-half inches wide, and not less than five nor more than seven inches long, on which must be written or printed, or partly written and partly printed, ONLY the NAMES of the PERSONS for whom the elector intends to vote, AND must DESIGNATE the OFFICE for which each person so named is intended by him to be chosen; and any ballot otherwise than described is illegal, and must be rejected. Approved February 12, 1879.

The legislature of Alabama had prescribed the mode of choosing Presidential electors as follows:

On the day prescribed by this code there are to be elected *by general ticket* a number of electors, for President and Vice-President of the United States, equal to the number of Senators and Representatives in Congress to which this State is entitled at the time of such election.

The following statutes of Alabama may be material:

AN ACT to amend section 276 of the code of Alabama.

SECTION 1. Be it enacted by the general assembly of Alabama, That section 276 of the code of Alabama be amended to read as follows: One of the inspectors must receive the ballot folded from the elector, and the same passed to each of the other inspectors, and the ballot must then, without being opened or examined, be deposited in the proper ballot-box.

Approved February 8, 1879.

AN ACT to amend section 286 of the code of Alabama.

SECTION 1. Be it enacted by the general assembly of Alabama, That section 486 of the code of Alabama be amended so as to read as follows, viz:

§ 286 (264). *Manner of counting out votes.*—In counting out, the returning officer, or one of the inspectors, must take the ballots, one by one, from the box in which they have been deposited, at the same time reading aloud the names written or printed thereon, and the office for which such persons are voted for; they must separately keep a calculation of the number of votes each person receives, and for what office he receives them; and if two or more ballots are found rolled up or folded together, so as to induce the belief that the same was done with a fraudulent intent, they must be rejected, or if any ballot contain the names of more than the voter had a right to vote for, the first of such names on such ticket, to the number of persons the voter was entitled to vote for, only must be counted.

Approved February 13, 1879.

(Acts Ala., 1878-'9, p. 73.)

The ground on which the inspectors rejected the ballots and were

H. Mis. 35—6

advised to do so at the time was virtually abandoned at the argument, and the latter part of the statute was then relied upon as the only valid ground for the rejection.

It is claimed that the ballots had on them more than the names of the persons for whom the elector intended to vote and what was an improper designation of the office for which each person named was intended to be chosen, and operated as a distinguishing mark.

The committee are of the opinion that the ballots were wrongfully rejected, and should be counted for contestant.

The paper used for the ballot was "without any figures, marks, rulings, characters, or embellishments," and then there was attempted, in the opinion of the committee, to be printed on it only the names of the candidates and what was designed as only a designation of the offices for which each person was intended to be chosen.

It is objected that the ballot does not correctly designate the office, under the Alabama statute cited, as the electors were to be elected on a general ticket; and it is contended that what was written in designating the candidates as electors, "State at large," "district electors," "1st district," "2d district," &c., did not designate any office known to the law. There is nothing in the law to prevent the selection of the electors, two at large and one of and from each Congressional district in the State. Such was done; in fact, each party did it. It is the usual and customary way in all the States. The statutes require it in many State, to be so done. It will hardly be claimed that the office of electors was so designated as to make it uncertain what office was meant, and that this vitiated the ballot so it could not be counted for the electors on that account alone. If it did, it may not affect the candidate for Congress, as he was properly named and his office well designated.

It is sufficient that the words and figures were designed only to describe the candidates and to designate the offices, so as to express the intention of the voter. It cannot be justly charged that the designation was intended or improperly calculated to operate as a distinguishing device or mark. It is at best, as claimed, only what may be called an erroneous designation; but, if so, it cannot be said that an error of that kind was obnoxious to the statute.

The statute allows of all that may properly be used to express the intention of the voter as to candidates and the offices; and it manifestly did not undertake to prescribe the form or mode of, or kind of type to be used in, naming the candidates or in designating the office.

If there had been two persons of the same name, it would hardly be contended that they could not be distinguished by giving the residence of the candidate. Or, if there had been a John Doe and a John Doe 2d, and the latter had been a candidate, his name could be so written. Had the eighth district been printed *8th District* on the ballot, there is nothing in that which would have been a violation of the statute, although the numeral 8 is a "figure."

The two parts of the statute are distinct, and the clause, "without figures, marks, rulings, characters, or embellishments," has reference manifestly to the outside and to the inside of the paper, independently of the names of the candidates and the designation of the offices. Otherwise it would be impossible to write or print a ballot, as it would necessarily have "figures," "marks," and "characters" in it when written or printed.

A literal interpretation must be avoided if necessary to give effect to the general intent. The letter must give way to the spirit, and a reasonable construction adopted.

The word "figure" may mean a statue, an image, or the form of anything as well as a numeral. It had reference, perhaps, to the practice of numbering each ballot as once was usual. So, a "mark" may be a punctuation mark merely; a "character" may mean a letter. It is manifest from the collocation of words used what evil the statute was intended to reach and prevent.

It is not necessary to go into any general discussion as to this class of legislation or as to its validity. The case does not call for it.

To sustain the objection made to the ballot by contestee would shock both the moral and the legal sense of every fair-minded man.

My conclusion is that the course pursued was a perversion of the statute, and the objection was seized upon as a pretext and induced by outside manipulation.

In any event, it would seem that the part which relates to the candidate for Congress may be regarded as a separate ticket.

A New York statute once required State and county officers to be voted for on separate ballots. At an election held under that statute a large number of ballots were cast for "Cook, for State treasurer," which had at the bottom of them "for county judge, Ezra Graves." These ballots were alleged to be illegal and the election contested. The supreme court in passing on the question said :

I have not been able, after the most deliberate consideration of the objection raised, to perceive that there is anything in it. The ballot for every office on a ticket containing the names of more than one officer must be regarded as a separate ballot. (People vs. Cook, 14 Barbour, 259, 299.)

The case was carried to the court of appeals and there affirmed. The court said : "The Speiman ballot, headed 'State,' had at the bottom 'for county judge, Ezra Graves.' Whatever effect this had on the candidate for county judge, it had none on the candidates on the State ticket." (People vs. Cook, 8 N. Y., 4 Selden, 68, 85.)

We refer incidentally to certain claims relating to certain precincts in

MADISON COUNTY.

The evidence tends strongly to show fraud and ballot-box stuffing in this precinct. It will warrant the rejection of the count and returns made by the inspectors. Contestee is returned as having received 142 ballots, and contestant 57. The count and return are impeached for fraud. Contestant has called 128 voters who swear that they voted for him. The other evidence tends to prove 155. (Record, pp. 208, 216, 206, 231, 174, 196, 197, 557, 190, 191, 192, 158.)

Rejecting the returns for fraud, and counting 128 votes proved to have been cast for contestant, according to the settled rule, will give him so many more votes. But as this is not necessary in view of the case in other respects, I do not go into the evidence more at length as to this precinct.

As to Meridianville (box No. 2) and Cave Spring, the evidence tends to show that contestant is entitled to 65 votes more than were counted and returned for him for these precincts, and that at Flint precinct he lost 17 ballots net by the vote not being properly counted and returned. But it is not deemed necessary to state the evidence and proofs, as in the view taken of the case by the committee this will not affect the result.

I do not sustain the claim of contestee as to Courtland precinct, although there is some apparent irregularity in the action of the inspectors, &c., in their conduct as to the box.

CONTESTEE'S DEFENSE OR COUNTER-CLAIM.

The contestee attempts to meet the contention of contestant, if proved, by the claim that illegal votes were cast for contestant by convicts, minors, non-residents, and non-registered persons.

The claim as to minors and convicts appears by the following tables, and the evidence is referred to in the same:

Minors who voted for Wm. M. Lowe, as claimed.

| Page of record. | Number of minors. | Names of witnesses who prove these voters were minors. |
|-----------------|-------------------|--|
| 896..... | 2 | J. W. Morgan. |
| 892..... | 2 | A. D. Lewis. |
| 893..... | 1 | A. D. Lewis. |
| 814..... | 1 | R. C. Gamble. |
| 894-899..... | 4 | William E. Blair and W. S. White. |
| 956..... | 1 | S. S. Ives. |
| 958..... | 2 | Shaler S. Ives. |
| 961..... | 3 | Younge A. Gray. |
| | 16 | |

Convicts who voted for Wm. M. Lowe, as claimed.

| Page of record. | Number of convicts. | Names of witnesses who prove these men were illegal voters. |
|-----------------|---------------------|---|
| 894..... | 3 | W. E. Blair. |
| 893..... | 1 | A. D. Lewis. |
| 893-899..... | 2 | A. D. Lewis and W. S. White. |
| 900-960..... | 1 | H. C. Hyde and J. M. Angel. |
| 900..... | 1 | H. C. Hyde. |
| 813-859..... | 5 | John N. Martin and Joseph A. Moore. |
| 859..... | 2 | Joseph A. Moore. |
| 859-860..... | 1 | Joseph A. Moore and C. B. Hayes. |
| 859..... | 2 | Joseph A. Moore. |
| 863..... | 1 | D. S. James. |
| 872..... | 1 | S. T. Wert. |
| | 20 | |

The claim as to non-residents hardly needs more particular reference. It is not sustained by proof.

Not finding either of the claims to be maintained by competent and credible evidence, I disallow them.

REGISTRATION.

Contestee does not set up a want of legal registration as vitiating the election in any precinct, but alleges that persons not registered had no right to vote, and that all votes cast by such were illegal, and must now be rejected. His claim and references for proofs appear in the following table, as presented by him in argument:

| County. | Precinct. | Pages of record on taining registratio | | Pages of record poll- list. | | Number of votes cast. | | Number of votes not registered. | Number to be deducted from Lowe's vote | Number to be deducted from Wheeler's vote | Difference or total loss to Lowe. |
|-----------|-----------------------|---|------|--------------------------------|-------|-----------------------|----------|------------------------------------|---|--|--------------------------------------|
| | | | | | | Lowe. | Wheeler. | | | | |
| Jackson | No. 10, Bellefonte | 704-708 | 891 | 44 | 130 | 56 | 42 | 14 | 28 | | |
| | No. 13, Barry's Store | 713-718 | 894 | 49 | 123 | 81 | 58 | 23 | 35 | | |
| | No. 15, Hunt's Store | 717-720 | 895 | 24 | 32 | 26 | 16 | 11 | 4 | | |
| Madison | No. 17, Nashville | 720-724 | 896 | 35 | 132 | 66 | 68 | 18 | 50 | | |
| | Clintleville | 571-584 | 856 | 166 | 222 | 61 | 35 | 26 | 9 | | |
| | Madison X-Roads | 584-592 | 658 | 50 | 111 | 32 | 22 | 10 | 12 | | |
| Limestone | Madison | 610-625 | 659 | 160 | 324 | 110 | 72 | 44 | 28 | | |
| | No. 1 Meridianville | 626-642 | 665 | 129 | 360 | 109 | 125 | 43 | 83 | | |
| | Whitesburg | 645-655 | 668 | 175 | 223 | 118 | 64 | 49 | 15 | | |
| Lawerdale | Collier's | 671-685 | 685 | 87 | 134 | 48 | 29 | 19 | 10 | | |
| | Tritana | 1218-1225 | 1215 | 84 | 336 | 275 | 206 | 69 | 137 | | |
| | Slough Beat | 821-826 | 852 | 123 | 213 | 107 | 68 | 39 | 29 | | |
| Lawrence | Mooresville | 828-831 | 863 | 90 | 610 | 215 | 120 | 26 | 163 | | |
| | Sbold Ford | 838-838 | 856 | 74 | 161 | 22 | 15 | 9 | 4 | | |
| | Oakland | 926-929 | 918 | 100 | 289 | 108 | 77 | 26 | 51 | | |
| Cobert | 945-946 | | | | | | | | | | |
| | Florence | 921-924 | 911 | 262 | 406 | 280 | 173 | 107 | 96 | | |
| | Cherokee | 930-944 | 911 | 124 | 124 | 59 | 31 | 28 | 3 | | |
| Lawrence | Prides | 428-436 | 459 | 442 | 44 | 63 | 14 | 8 | 6 | | |
| | Leighton | 414-415 | 442 | 80 | 95 | 52 | 28 | 24 | 4 | | |
| | South Florence | 420-427 | 441 | 19 | 165 | 38 | 35 | 3 | 32 | | |
| Lawrence | Courtland No. 1 | 1142-1154 | 1192 | 134 | 192 | 131 | 77 | 54 | 23 | | |
| | Courtland No. 2 | 1142-1154 | 1139 | 111 | 419 | 181 | 151 | 46 | 111 | | |
| | Mount Hope | 1168-1171 | 1173 | 132 | 170 | 29 | 16 | 13 | 3 | | |
| Lawrence | Landererville | 1173-1177 | 1191 | 62 | 82 | 32 | 18 | 14 | 6 | | |
| | Hampton's | 1179-1182 | 1182 | 24 | 43 | 21 | 18 | 8 | 5 | | |
| | Red Bank | 1184-1186 | 1183 | 36 | 111 | 16 | 12 | 4 | 8 | | |
| Lawrence | Avoca | 1184-1198 | 1198 | 31 | 61 | 26 | 13 | 7 | 6 | | |
| | Wolf Spring | 1194-1198 | 1187 | 25 | 112 | 42 | 34 | 6 | 28 | | |
| | Hillsboro' | 1196-1198 | 1189 | 164 | 228 | 261 | 151 | 110 | 41 | | |
| | | | | 2,825 | 3,630 | 2,698 | 1,846 | 852 | 994 | | |

Contestee's evidence does not show for whom many, if any, of the persons claimed to be non-registered voted. He has not called the persons themselves, but attempted, with little success, to prove it by third parties. The instances proved by any competent or sufficient evidence are very few and need not be stated, as they would not change the result on any hypothesis presented or contemplated.

If found that enough illegal votes were cast to change the result, and it not appearing for whom they voted, the question would be whether the election should be declared void, or the vote distributed among the candidates, under the rule laid down in McCrary, § 298.

Contestee, for aught that appears, could have taken the evidence of the witnesses themselves to establish their identity as the persons whose names appear on the poll-lists, and to prove for whom they voted. This he has not done, and no reason why not is shown.

Of course I do not hold as matter of law that such is the only mode of proof allowable, while generally it is quite satisfactory, as the voter usually best knows, and his evidence is direct.

The law of Alabama as to registration involved needs first to be stated, so far as deemed material.

By article 8 of the constitution, which will be found at page 142 of the Code of Alabama, the qualifications of the voter are prescribed as being a residence of one year in the State, of three months in the county, and thirty days in the precinct.

2. By section 5 of the same article it is provided in these words:

The general assembly may, when necessary, provide by law for the registration of electors throughout the State, or in any incorporated city or town thereof, and when it is so provided no person shall vote at any election unless he shall have registered as required by law.

Statutes passed in May, 1875, provided for registration in the whole State (code of 1876).

§ 227. *Secretary of state superintends.*—The secretary of state shall superintend the registration of electors in this State.

§ 228. *Registrars and assistant registrars.*—The secretary of state, on or before the first Monday of May, 1875, or as soon thereafter as practicable, shall appoint one registrar in each county in this State, who shall appoint one assistant registrar for each voting precinct or ward in the county for which such registrars are respectively appointed; and such assistants shall, as soon as practicable after their several appointments, make a full registration list, as hereinafter provided, of all the electors in the precincts or wards for which such assistants are appointed respectively; and such registrars and assistants, before entering on their duties, shall take the oath of office as prescribed in section one, article fifteen, of the constitution of the State of Alabama, which oath may be administered by any officer authorized by law to administer oaths in this State, which must be filed in the office of the judge of probate of the county; and the assistant registrars are authorized to administer the registration oath, and it shall not be lawful for any other officer or person to administer the same.

§ 229. *To return list of registered electors.*—It shall be the duty of each assistant registrar to make a due and correct return of the list of registered electors made by him.

§ 230. *Place and manner of registration.*—It shall be the duty of such assistant registrars, within the several precincts or wards for which they are appointed respectively, to make registration of the electors residing in such precincts or wards upon blank forms provided for that purpose, and shall not register in any other way or on any other form than that prescribed.

§ 231. *Oath of elector and how subscribed.*—Before registering electors, the assistant registrars shall cause each elector who is qualified to vote under the constitution and laws of the State of Alabama to take and subscribe an oath that he is a qualified elector under the constitution and laws of the State of Alabama, and the name of each elector must either be subscribed to such oath by the elector himself, or the same may be subscribed by the assistant registrar; but when signed by the assistant, it must be with the consent and direction of the elector so to do, which shall be evidenced by the attestation of the assistant registrar's name, written opposite to the name of the elector, under the appropriate head, on the prescribed form; and the oath shall be in the printed and written form at the head of the registration list prescribed by this chapter, and the names of the electors shall be subscribed to the same under the appropriate head prescribed for the same in such list.

§ 232. *Number and date of registration, residence, employment, color of elector, and name of employer.*—The assistant registrars shall write opposite to the name of each elector, under the appropriate head in such form, the number and date of registration, his place of residence, whether white or colored, his employment, and if he is in the employment of another, the name of such employer; and if the elector resides in any town or city, the street and number, or other mark or description by which his place of residence may be identified.

§ 233. *Registration on election day, and certificate.*—The assistant registrars shall be present at the voting precinct, or ward, for which they are respectively appointed, on the day of election, to register such electors as may have failed to register on any previous day in their precincts or wards, which registration must be done, in every respect, according to the form prescribed; and the assistant registrar shall furnish to each elector who may register on the day of election a certificate of registration, which shall be in the following form:

I, _____, assistant registrar, do hereby certify that _____ has this day registered before me as an elector.

(Signed)

_____,
Registrar.

Which certificate, signed by the registrar, shall be sufficient evidence that such elector is registered; and in case such assistant registrar, for any cause, is unable to attend, or there be a vacancy in the office of assistant registrar for such precinct or ward, the county registrar shall appoint some competent person as assistant registrar for that day; and if no appointment be so made by 10 o'clock of that day, then the inspectors of election may appoint an assistant registrar, who may qualify and act as such for that day; but this section shall not apply to incorporated towns or cities having a population of more than five thousand inhabitants, except as is hereinabove provided by this chapter.

§ 234. Copy of registration list delivered to judge of probate, and how bound; duplicate sent Secretary of State, and how bound; original registration books subject to inspection; additional registration; and supplemental returns.—Each assistant registrar, after having registered all the electors in his respective precinct or ward, as near as may be, and not more than three months after his appointment, shall make a true copy of same in the registration book furnished for the purpose under the provisions of this chapter, and shall also make a true copy or duplicate of the original registration list, which, together with the original, as soon as practicable after same is completed, shall be returned to the office of the judge of probate of the county in which such registration is made, and delivered to the judge of probate, who shall, as soon as the registration for all the precincts and wards in such county have been made, cause the original lists so returned to him to be securely bound in book form, in good substantial pasteboard binding, and preserve the same in his office for public inspection, keeping the several precincts and wards separate from each other in arranging same for binding, but binding the whole of the originals for the county in one volume, appropriately labeled; and the judges of probate of the several counties shall, as soon as such returns are fully made, return the duplicates to the Secretary of State, who shall arrange same by precincts, wards, and counties, and so cause the same to be bound in one or more volumes, and in such style as he may deem advisable for convenient reference and preservation; and the registration books made out by the assistant registrars in the several precincts and wards shall be kept by them, subject to the inspection of the public, and in which they shall make entry of all additional registrations made by them, respectively, from time to time, and shall, not less than fifteen days before any general or special election held in the county, make a supplemental return to the judge of probate in like manner as the first return.

§ 235. Duty of assistant registrars to revise lists; how prepared and delivered to judge of probate.—It shall be the duty of such assistant registrars in each year to make a revised list of electors for their precincts or wards, showing the names of all such electors as shall be known to or be proven to them to have died or to have removed from the ward or precinct, or to have become disqualified as electors by the conviction of any felony, and also of all such as have registered at and since the last election; which list shall be prepared in the manner prescribed for the other lists, and shall be delivered to the judge of probate not less than fifteen days before any general or special election; * and in incorporated towns or cities having a population of more than five thousand inhabitants not less than ten days before a general or special election.

§ 236. Not lawful to register within twenty days before election; special registrations, how returned and treated.—It shall not be lawful to register any elector within twenty days before, nor in any incorporated town or city having a population of more than five thousand inhabitants within fifteen days before, any general or special election day; and all registrations made on the election day by any registrar appointed for that day only shall be returned to the assistant registrar for that precinct or ward properly certified, which shall be returned to, and be treated by, the judge of probate as if made by the regular assistant registrars.* But in incorporated cities or towns having a population of more than five thousand inhabitants any person who may have attained the age of twenty-one within fifteen days next preceding any general or special election, and who is qualified to vote under the constitution and laws of the State of Alabama, may be registered by the probate judge of the county on the day of election in the same manner as is prescribed for the registration of electors; and such judge of probate shall cause the name of such elector to be entered upon the registration list of the ward in which such elector shall reside, and shall issue to such elector a certificate of registration as prescribed by section 233.

§ 238. Books and blanks furnished probate judges for assistant registrars.†—The secretary of state is authorized and directed to obtain and furnish to the probate judges of the several counties in the State the books and blanks necessary for the use of the several assistant registrars; such blanks shall be printed and ruled on good paper, suitable for binding in book form, as may be directed by the secretary of state, one-third of which shall be securely bound in good paper pasteboard and leather binding, in sufficient numbers to furnish one book to each assistant registrar in the State, together with at least as many blanks unbound as are contained in such books; and each page of such books shall be in the following form:

STATE OF ALABAMA,
. County of _____:

We, the undersigned registered electors, each for himself, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the constitution and laws of the State of Alabama; that I am not excluded

* As amended February 7, 1877, p. 116, sec. 1.

from registering or voting by any of the clauses in section three of article eight of the constitution of the State of Alabama, and that I am a qualified elector under the constitution and laws of this State.

| No. | Date. | Name of electors. | White or colored. | Registrar's attestation. | Residence, by precinct or ward. | Employer's name and remarks. |
|-----|-------|-------------------|-------------------|--------------------------|---------------------------------|------------------------------|
| | | | | | | |

I, _____, registrar for said precinct (or ward), in said county and city of _____, do hereby certify that the above and foregoing names of registered voters, from number one to ___, inclusive, were duly registered by me according to law, between the dates of _____ and _____, in said precinct (or ward), and that each of said persons so registered took and subscribed before me the above and foregoing oath, on the days and dates set opposite to their several names respectively.

Witness my hand this ___ day of ___, 18__.

Registrar.

§ 239. *Probate judges make out and file registration lists, furnish copies to inspectors, and post list.**—Each probate judge of the several counties shall, from the registration list of electors returned to their several offices make a correct, alphabetical list of the qualified voters of such county, arranged by precincts and wards, correcting and completing the same from the supplemental and revised returns of assistant registrars, which list, when so completed, shall be certified by the probate judge officially to be a full and correct transcript of the list of registered electors as the same appears from the returns of the registrars in his office; one copy of which list the judge shall deliver to the inspectors of election in each precinct or ward immediately preceding every election, and one copy of the whole list of registered electors in the county shall be posted at the court-house of the county ten days, and in incorporated towns and cities having a population of more than five thousand inhabitants five days, before the election.

§ 241. *Registration must be in precinct or ward.*—It shall not be lawful to register any person except in the voting precinct or ward in which such person is entitled by law to vote; and the assistant registrars, when they have no personal knowledge of the identity or residence of an elector, shall examine him under oath touching the same, which oath shall be administered by the assistant registrars.

A right of challenge is given at the polls.

Section 278 of the Code of Alabama is in these words:

OATHS ADMINISTERED BY INSPECTORS IN CASE OF CHALLENGE.

When any person offering to vote is challenged by any qualified elector, before such person shall be allowed to vote he shall take and subscribe an oath, which one of the inspectors of such election shall tender and administer to him, and which shall be in the following form :

STATE OF ALABAMA,

_____ County :

I, _____, do solemnly swear (or affirm) that I am a duly qualified elector under the Constitution and laws of the United States, and the constitution and laws of the State of Alabama, and that I have resided in the State of Alabama one year next preceding this election, three months in this county, and have actually resided thirty days in this precinct or ward (as the case may be) next preceding this day, and that I am twenty-one years of age, or upwards, and that I have not voted before on this day at any general or special election, at the place of voting, and that I have not been convicted of treason, embezzlement of public funds, malfeasance in

*As amended Feb. 7, 1877, p. 116, sec. 1.

office, or of any crime punishable by law with imprisonment in the penitentiary, larceny or bribery. So help me God.

And in addition to such oath, if the person so challenged is not personally known to one of the inspectors to have the qualifications required by law, then one of them shall require such person, before he shall be allowed to vote, to prove his identity and residence in the State, county, and precinct or ward in which he offers to vote, by the oath of some elector personally known to some one of such inspectors to be a qualified elector, which oath shall be administered by one of the inspectors, and be in the following form:

STATE OF ALABAMA,
— County :

I, ———, do solemnly swear (or affirm, as the case may be) that I have known (here insert the name of the person offering to vote) for the last twelve months preceding this election, and that he has been a resident of this State for said time, three months in this county, and that he has actually resided in this precinct (or ward) for the last thirty days, and I believe he is twenty-one years of age or upwards, and that he has not voted before on this day at any general or special election. So help me God.

And upon such oath being duly taken and subscribed, the ballot of the person offering to vote must be received and deposited as other ballots of qualified electors. And it shall be the duty of the inspectors to file all the oaths so taken and subscribed, and when the election is closed, such inspectors shall forward them, in a sealed package, to the judge of probate, who shall lay them before the next grand jury sitting for said county.

Contestant contends that a non-registered elector is not disqualified under the laws of Alabama. His argument on this point is inserted :

Constitution provides: "The general assembly may, when necessary, provide by law for the registration of electors throughout the State, or in any incorporated city or town thereof, and when it is so provided no person shall vote at any election unless he shall have registered as required by law." What is meant by the clause, "when it is so provided?" The word "so" qualifies and gives meaning to the clause. It means manner or extent. It is equivalent to saying that when the law shall provide in that manner, or to that extent. That is, when the law shall require persons to register as a necessary prerequisite before voting, then no person shall vote until he shall have registered, as required by law. Is there any law of the State of Alabama which requires an elector to register before he can vote, or authorizes the rejection of his vote after it is cast because he has not registered? The statute regulating the qualification of electors is § 224, Code of Alabama [1876], is as follows: "Every male citizen of the United States, and every male person of foreign birth who has been naturalized, or who may have legally declared his intention of becoming a citizen of the United States, before he offers to vote, who is 21 years old or upwards, who shall have resided in this State 1 year, 3 months in the county, and 30 days in the precinct or ward, next immediately preceding the election at which he offers to vote, is, unless within the disabilities imposed by the provisions of this chapter, a qualified elector, and may vote in the precinct or ward of his actual residence, and not elsewhere, for all officers elected by the people." Who are the persons disqualified by the provisions of this chapter? "Those who have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or other crime punishable by imprisonment in the penitentiary, and idiots or lunatics, shall not be permitted to vote in this State at any election by the people." These are the only persons prohibited from voting. They are not prohibited because they have failed to register, but because they have been convicted of specified crimes, or are idiots, or lunatics; all other persons are legal voters who possess the qualifications prescribed in § 224. What are these qualifications? The elector must be a citizen of the United States, or have declared his intention to become a citizen of the United States, must be 21 years old, must have resided one year in the State, three months in the county, and thirty days in the precinct, or ward. These are the only qualifications—citizenship, residence, and age. Not a word is said about registration. If the elector has all the qualifications mentioned in the statute he is a legal voter, and there is no law to reject his ballot because he is not registered.

Section 278 requires persons who are challenged to take an oath, which is herein set out. The elector is required to swear to age, residence, and that he has not voted at any other precinct on that day, and in addition to such oath, if the person challenged is not personally known to have the qualifications required by law, he must prove his identity and residence in the State, county, precinct, or ward by the oath of some elector personally known to one of the inspectors, to be a qualified elector. He is required to prove every fact but registration. Why is he not required to prove registration? Because registration is not a necessary qualification of a legal elector.

What is the object of registration? It is to furnish evidence to the inspectors of who are legal voters. It is not conclusive, nor the only evidence. He may be challenged, although his name may be on the registration list, and he must then prove his qualifications by his own oath, and if he is not known to one of the inspectors to be a qualified elector, then he must prove his qualification by some elector known to the inspectors. If his name is not on the registration list, and he is challenged, he can prove his qualification in the same manner. When this proof is tendered, the inspectors have no discretion, but are compelled to receive his ballot, and put it in the box. The conclusion is that registration has not, in Alabama, been made a necessary qualification to vote.

There seems to be no decision of the State courts on the point raised, and the question becomes immaterial, unless the necessary basis of facts is first established. I am inclined, however, to the opinion that, under the constitution and the statutes passed thereunder (both being in harmony), that registration was designed as a reasonable regulation, although not prescribed as a qualification.

The question is not free from doubt, but considering the object and purposes subserved by a system of registration, I am inclined to so hold.

It is quite doubtful whether the law of Alabama renders void a vote of a non-registered elector when once cast and received. But for the purposes of the present case, I may safely assume that registration was intended as a prerequisite, and so regard it.

Analogous questions were discussed in the case of *Finley vs. Bisbee* in the Forty-sixth Congress, and in *Curtin vs. Yocom* in the Forty-sixth Congress. They furnish, however, no substantial authority beyond the general doctrine discussed, as the constitution and statutes of those States differ materially from those of Alabama.

While, for the purposes of this case, I assume that registration is a prerequisite in Alabama as a reasonable regulation, I find that the proof does not sustain the charge made by the contestee.

The number of non-registered votes seems quite large under contestee's allegations. And if the law of Alabama is as claimed, it seems quite strange that, in a hotly contested election such as this was, and when the polls were managed and attended by vigilant officers and challengers, with a copy of the registration lists before them, about one-third of the whole number of electors in the precincts referred to were not registered.

The following circulars will show how the canvass was conducted. It appears that the Democratic party had in most of the precincts two at least of the three inspectors, and in some cases all of them, besides the other officers. It must be presumed that the managers and challengers knew and could identify easily most, if not all, the voters in the precincts. I give the printed document in full, as bearing upon this issue and affecting probabilities:

EXHIBIT D.

The following recommendations are made to the respective Hancock clubs in the 8th Congressional district of Alabama. Each club can judge which of the recommendations are adapted to their locality, and will, of course, only adopt measures as, in their judgment, seems to them expedient. A prompt and vigorous compliance with the plans they adopt is earnestly urged.

THE WHITE VOTE.

1. Make a list of white voters in each precinct not on the roll of its club.
2. Appoint a committee of one member to wait on each of these and respectfully and cordially invite him to join us. The committee to report at the next meeting of the club.

3. If any one fails to respond to this invitation, send a committee of two other members most likely to influence him, who will urge him by every consideration that can be presented not by lethargy or inaction to desert his kindred and country in this effort of deliverance, and in some cases to tell him that his decision will, in the opinion of many of his friends and neighbors, determine whether we regard him as a friend or foe to our party.

With some persons such extreme expressions would not be advisable, as many gentlemen who do not care to have their names enrolled in clubs are our earnest friends.

THE BLACK VOTE.

1. Make at once a complete list of the qualified negro voters in your precinct, in which shall be set down:

First. The name and address of each voter.

Second. With whom he works, and whether as a hired hand or tenant.

Third. What merchant or other person advances for him.

2. It is deemed preferable that this census be made by regularly appointed census takers or committees, and that the negro voter should know that he is thus enrolled by the club.

Returns to the central organization of the county.

3. As soon as these lists are completed, each club will promptly forward a copy to the county chairman, to the end that all may be collated and printed.

A copy of the county vote thus registered should be in the hands of our friends at each voting precinct on the day of the election.

4. Make a separate list of those members of the club who think they have no influence with the negro voters and detail each one to look after one or more lukewarm or infirm white men in the precinct, and see that they vote.

5. There are a number of negroes who will not vote with us, but who will promise to stay away from the polls.

To look after these and see that they adhere to their promise, enroll young white men of the precinct under the voting age, before the day of the election, and assign each one to his negro.

A legitimate and peaceful election.

The foregoing suggestions contemplate winning the election by fairly placing in the boxes the most votes legitimately obtained. Systematic and energetic exertion will do it. Each member of the Hancock clubs must have his part in the work assigned him and the club hold him to his full performance.

Rioting before or at the polls, or race collision brought about by the whites, are deemed almost insane folly. We may carry the election by these means, but we would not reap the beneficial results.

On the other hand, the colored men who go with us must be protected there and at all times. And while it is not expected that insolent aggression be submitted to by the white man, every consideration of patriotism and every hope of success in the effort we are making to establish the constitutional free government of our fathers should lead our friends to avoid every occasion of disturbance; and if they unfortunately arise, then be sure they are in the right.

If we attend the meetings of the Radical party hereafter, each club in whose territory a meeting shall be expected shall promptly inform the county chairman, to the end that he may order a proper attendance from the clubs.

It is of the first importance that the county chairman or central organization be kept thoroughly informed of the progress of the canvass.

If our plans are or are not succeeding we must know it, so as to conform to circumstances.

THE ELECTION.

1. The club will use their influence to cause all persons employing Democratic labor to aid them to be present and vote.

2. Make a list of white men who from infirmity or other causes need bringing to the polls, and assign a member of the club to each one of these.

3. Appoint two challengers and furnish each with a copy of the list of voters or census.

4. Appoint a committee of members who will exercise general superintendence and see that the programme on each election day is carried out.

5. Use all lawful means to watch and keep to their promise those negroes who have agreed not to vote.

But above all things be careful in this to avoid intimidation.

PLAN OF CAMPAIGN.

1. The Hancock clubs for the election of all Democratic nominees will meet not less than twice a month; oftener when expedient, and in executive session with closed doors.

2. It is desirable that our attention be concentrated upon *selected* negro voters to secure the majority desired, and that the others be let alone.

Those selected for our efforts should be, not party leaders, office-seekers, or others who expect to make something out of the Radical party, but—

First. Those who have acquired property and pay taxes.

Second. Those whose relations to and standing with the whites is best.

Third. Those who are poorest and most dependent upon the whites.

Fourth. The weaker classes generally.

3. It is deemed best to operate upon the individual negro voters and to carefully avoid attempting to influence them in masses. To this end, when your register of negro voters is complete, submit it to your club, and require each member to select such negro or negroes as he can influence. Let such member be a committee of one for the purpose he has undertaken and report results to the executive committee of the club; these results to be registered, and report when called for by the county chairman.

It is hardly probable that so many persons would openly violate the law or be allowed by sworn officers to do so. The penalty prescribed for the fraudulent voter is severe under the laws of Alabama, although it is said to be quite light comparatively as regards the officers of election. They had with them in each precinct, as must be assumed under the provisions of the law cited, full certified copies of the registration lists with the names of the electors alphabetically arranged thereon, and the assistant registrar of the precinct was required to be present at the polls with papers ready to register all electors who had not been registered prior to that day, and it may be assumed that he was present, or that some other person was appointed by the inspectors to attend to that duty in his absence.

The vigilance exercised generally is illustrated by what was done in regard to the so-called marked ballots already considered. Similar activity is probable in respect to the registration and challenging.

It is not now claimed or shown that any of those who voted were not in fact qualified voters and entitled to vote otherwise, or that any of them were challenged. No one of them is called as a witness to prove his identity or failure to register.

All this renders the claim of contestee very improbable. It would require proof of an indubitable character.

It is the settled law of elections that where persons vote without challenge, it will be presumed that they were entitled to vote, and that the sworn officers of the election who received their votes performed their duty properly and honestly, and the burden of proof to show the contrary devolves on the party denying their right to vote. (Report in *Finley vs. Bisbee*, Forty-fifth Congress.)

We call attention to the case of *Perry vs. Ryan*, 68 Illinois, 172:

Where a person votes at an election without having been registered and without any proof of right, if it does not appear he was challenged or any objection made to his vote, the presumption must be that he was a legal voter and was known to the judges of election.

In 83 Illinois, 498, where a registry law very similar to the law now under consideration was construed by that court, it was held:

The presumption of the legality of a vote in no way depends upon the omission to challenge or object to it, or any presumed knowledge of the judges of election, but it

arises from the fact of its having been deposited in the ballot-box. When once deposited it will be presumed to be a legal vote until there is evidence to the contrary.

Now, let us see what the proof adduced is.

Contestee has procured and put in evidence certain papers certified to by the probate judges in five several counties respectively, purporting to be copies of the registration lists for the precincts involved, and also of papers called the poll-lists from the same precincts. His claim is that he produces certified copies of all the registration lists of these precincts, which show all the persons registered and qualified to vote in the same, and poll-lists showing the names of all those who did vote as written down by the clerks at the election. By comparing these papers in each precinct named in his table, cited hereinbefore, he finds, as he says, and as witnesses who have compared them swear, 2,698 names in the aggregate on the poll-lists which are not on the registration lists, and he contends that it follows that they were not registered, and their votes illegal.

The minority of the committee, in their report (p. 27) in *Bisbee v. Finley*, an analogous issue, said that "the evidence relied on was wholly inadequate, being altogether *inferential*." But we go further:

Now, in order to have this proof satisfactory and sufficient it must at least be shown by affirmative, competent, and credible evidence that the records contain copies of all of the original and supplementary lists of registration made out by the registrars and assistant registrars since 1875 and before the election of November 2, 1880, together with all that were made on election day at the polls by the assistant registrars, or those appointed in their place by the inspectors in the absence of the registrar. Unless we have copies of all the registration books and lists, we have not got the proper basis for comparison.

We must next have all of the requisite poll-lists duly proved and properly authenticated.

Upon examining the copies certified to, we do not find, save in a few cases, what answers these requirements. I find certified lists extracted or taken from books, not copies of the original books or lists, or what purport to be copies of the same. I find nothing to show what names were once on them, and been dropped or taken off by reason of deaths, removals, or disabilities, or for other reasons. Judge Richardson certifies, page 1225, that one volume is missing in Madison County, and Judge Talley that part are lost in Jackson County (Rec., p. 798.) Few of the lists are verified in the original by the certificate of the registrar, as required by statute, and as it must be presumed they would be if genuine. In some of the counties the copies annexed do not cover the whole period of time from 1875, the date of the first registration, to the day of election, and including the lists made on the day of election under the law.

The papers copied, or purporting to be extracted from, are not many of them in the form prescribed, with the appropriate headings, contents, and certifications, as they would be if the genuine originals. The case is such as to demand legal and strict proof.

I am not satisfied with that adduced. It is too loose, uncertain, and irregular, and so liable to error, mistake, and omission as to require extrinsic evidence, which we have not got, in its support. Mere certificates of judges beyond that of copies of papers given are not enough to meet counter-evidence and presumptions.

I do not mean to intimate that any of the judges of probate would knowingly make or give false certificates, or intentionally withhold any lists. But when we find, as we do, proofs that registration lists have been

kept loosely and not bound up in books, as the law requires, some of them lost and not to be found, some of them made up since the election was held, many of them not covering the whole period of registration, and few of them answering in form or substance the requirements of the law. the papers furnished are not entitled to full credit. Several of the judges have been examined as witnesses, but they have failed to supply the needed evidence that the lists produced are all that were ever returned into their offices, and supply other facts needed to give certainty and exclude certain reasonable hypotheses.

(See evidence of Judge Harroway, pp. 906, 907; Bridges, pp. 321-325; Briggs, p. 884; Judge Steele, p. 1358.)

In one instance the judge certifies to a copy of a poll-list, and swears to it as if produced by him from the files at his office, when it was never there and comes into the evidence from other sources. (Rec., pp. 822, 854, 807-8.)

None of the registration lists furnished the inspectors and used at the polls are put in evidence. None of the registrars are called as witnesses to see whether all the registration lists taken at the polls were sent into the probate offices and when, or how many were registered at the polls and given certificates. It does not appear how many and what ones were challenged and took the oath prescribed, and then voted, as the oaths do not appear to be in the probate office.

The only evidence we have of the names of the persons who voted is in the shape of what purport to be certified copies of poll-lists found in the office of the judges of probate. How they came there or when deposited does not appear, save as a presumption of fact. It was the duty of the inspectors to certify and sign the poll-lists and send them in with the returns, and they are required to be left and kept at the probate office. An inspection of the copies produced shows that most of them do not contain the certificate of the inspectors as required by law, and they have no verification or identification therefore as genuine poll-lists, and cannot be regarded as proof. In some cases a presumption of fact may do; but on a controverted issue like this that presumption is of light weight.

In the three precincts of Limestone County embraced in the claim there are no poll-lists which appear to have been returned at all. Contestee has put in evidence three papers, sworn to by one of the inspectors, in each case as the poll-list, and purporting to be signed by the three inspectors. But as they never sent them to the probate office, as required by law, and no reason or explanation for the omission is given, we do not regard them as proof or as worthy of credit. The conduct of these inspectors is the subject of grave distrust, and the alleged discrepancies so great that the rejection of this evidence is fully warranted. There is a strong probability at least that there was fraud and manipulation on the part of the single inspectors respectively who produced the lists. Neither one of them is supported by the evidence, or even proof of the signatures of the other inspectors, as they are not examined as witnesses. They knew the law requiring the inspectors to verify the poll-lists, and must be presumed to know also that they were required to send them in with the returns. If they purposely withheld the poll-lists (and they do not pretend to the contrary) it may safely be assumed to have been for some fraudulent purpose. If they are guilty of fraud in that respect they would not be likely to stop short of most anything else. Contestee called witnesses to testify that they had examined the copies of registration list produced and the poll-lists referred to, and give lists of names which they find on the poll-lists and not on the regis-

tration lists. I have compared the same papers to a considerable extent, and am enabled to say that these witnesses have testified with great recklessness, to say the least. I have gone over the list of names (given as not registered) in several instances. Besides some names which are on the registration lists in full, we find many which differ only in some particulars, there being such a correspondence as to indicate that they relate to one and the same person. In many cases the differences are very slight. The clerks at the polls manifestly wrote in great haste and carelessly, not getting or hearing the name as pronounced with any accuracy. For instance, "Henry Stokes" is on the registration list and "Henry Stocks" is written on the poll-list. The surname "Quades" is written "Quarrels," while the initials are the same. (See illustrations, Rec., p. 1043-1045, 509, 515, 820, 819, 1358-1359.) And yet these persons are claimed and sworn to as among the non-registered.

The instances of this nature are so numerous and marked, among other evidences of haste and inaccuracy, if not that they have been manipulated and gotten into the probate court fraudulently in place of the genuine, as to render the poll-lists unreliable for simple comparison.

Besides this it is in proof that negroes go by different names, and often change their names, and that this is done by them generally and as a class, and that their residences are not always fixed and permanent, but they often change them. They may have registered in one precinct or county, and then moved into another, and remained long enough to get a right to vote there without getting on to a new register, while the constitution requires them to be only once registered in order to be allowed to vote. Some instances appear casually in the evidence where such produced certificates of registry from other precincts and counties show their right to vote.

It would seem that registration lists were not sent to the probate court in some instances; that one whole volume was lost in Madison County, and some lists in Jackson County; that poll-lists were not returned in many cases as required by law; and it is quite probable that more lists than are proved have been mislaid or lost. It is more probable that this is so than it is that so many persons not registered should vote and be allowed to vote fraudulently and without challenge. As electors could be registered at the polls, if not registered prior, and get certificates so easily, and if registered elsewhere could vote by taking the prescribed oath, there is a very wide field of probability to explain the discrepancies alleged between any particular registration list and poll-list produced. There are a very few instances where both the registration lists and the poll-lists of the same precinct are proved and appear to be regular and complete. And in these the things suggested would and do explain the alleged want of identity in the names as written.

Unless the explanations suggested avail, it is apparent that large numbers on the registration lists did not vote at all, which is quite improbable in an election exciting so much interest and so hotly contested.

There is no list furnished which indicates or shows revisions made because of deaths, removals, and disabilities. And we don't know how many may have been stricken off by mistake or wrongfully, or how many had once removed after being registered and afterwards returned without their names being restored by the assistant registrar, whose duty alone it was to do it. I have already adverted to the fact that being registered once in the State seems to answer the constitutional provision. No fault of the registrar in striking a name off or in omitting to restore it can deprive the voter of his right to vote if once registered.

To go into full details would occupy too much space. I will refer to only a few in addition to what has been already said.

In Limestone County the registration lists purporting to be furnished are manifestly not copies of original registration lists, but of some prepared for the occasion or taken loosely from some list or source not appearing. The poll-lists furnished in copy do not come from the probate court, but from one inspector by deposition, each one a delinquent, and a violator of law and duty, without excuse or explanation shown, and subject to the gravest suspicions as to their motives in withholding the poll lists from the returns made after elections. These three precincts alone involve 344 alleged illegal votes.

Registrar Martin, page 814, swears to loss of registration list of 145 names.

In Florence precinct, while it is claimed that there were 280 non-registered voters, a challenger was present, who challenged vigorously over 100 electors for other reasons, but not one as not registered. (Deposition of Jones, 881.) In Triana precinct 275 non-registered are claimed out of a vote of only about 412 voters. Registration book No. 1, certified to as lost or mislaid, may account for this. Poll-list not signed by inspectors. As two witnesses were examined by contestee as to this poll, and were present challenging, it would have been well to have had a copy of the registration which was at the poll on the day of election to see whether the names were not in fact on that. We have got neither this nor any revised lists made by the registrars at any time since 1875.

They must now be presumed to have been on, and that there is some mistake about the copies furnished by the judge or purporting to be.

In Lauderdale County it appears that no registration book as required by law could be found. (Rec., p. 907.)

In Madison County only one of two poll-lists are duly certified and verified as genuine.

Names are pasted on in printed slips instead of being written, as the law requires.

Inasmuch as books of registration were not made and kept according to law, but it was found on loose sheets, the lists sent to each precinct on the day of election would have been the best or most satisfactory evidence of who were registered, and in no instance have we got them.

All of the evidence has been examined upon this issue of non-registration with an anxious desire to do the contestee and his alleged proof full justice. There seems to have been wanting on his part no amount of industry and professional skill in the preparation and argument of his case. But there is a conspicuous absence of evidence needed to establish his claim, if well founded. Even the judges of probate have failed to give such oral evidence as was needed to make the proof of registration and poll-lists satisfactory and complete. Their testimony is more significant for what was not asked in questions than for what it contains, especially after the objections thereto made and indicated at the time. There is also a total failure to call the assistant registrars and the inspectors and managers of elections, and to produce the books kept by the former, and the lists used at the polls, and to supply what is wanting in the papers produced to verify the same as all and accurate. They had been attacked by contestant, and his objection to the proof indicated in many respects. Presumptions of regularity and full discharge of duty in the respects now in question are balanced by other presumptions in favor of contestant, and much shaken, if not entirely overthrown, by evidence otherwise. With such proof as appears of looseness and irregularity in regard to the registration and poll lists,

and their use, with no evidence from the electors themselves, or the registrars or election officers, in the absence of the lists used at the polls, and upon the facts already shown in proof and already indicated, a comparison between the alleged lists produced fail utterly to prove the alleged charges of the contestee, and we feel constrained to find the issue against him.

We are asked to presume that all registrars did their duty, that judges of probate had all the papers which the law provided should be sent to them, that the poll-lists not signed were the genuine and true ones, when they could be so easily manipulated without complicity on the part of the judges, in order to overcome all the presumption in favor of the legality of the votes cast. I cannot do it in the face of so much evidence as appears to weaken those presumptions invoked by contestee.

There is another consideration which ought to be noted as a very strong reason at least why contestee should be held to the strictest rules of evidence, if not as justifying the claim that the ballots of voters not on the registration lists apparently should not now be rejected after they were offered and deposited without challenge or objection at the time. Under the law of Alabama, as already stated, any qualified voter, if not on the copy of registration lists with the inspectors conducting the poll, and challenged, may register at the time and on the spot, or take the requisite oath and then rightfully vote. If he is not challenged, and is allowed to vote without doing this, the failure of duty on the part of the registrar or inspectors may unjustly deprive the elector of his vote. The case would perhaps come within the spirit, if not the strict letter, of section 2007 of the Revised Statutes of the United States.

The remarks of Mr. Calkins in case of *Curtin v. Yocom*, although not in all respects applicable to this case, are pertinent and forcible, and we quote them :

I call the attention of the members of the House especially to the conclusion reached by Judge Briggs in construing this law. He says : "By accepting the vote," referring to the non-registered voter who presents himself at the polls without an affidavit, &c.—"by accepting the vote without demanding the proof they deprive the voter of the opportunity of furnishing it." To construe the law as contended for by my friend from Pennsylvania (Mr. Beltzhoover) makes it a mere trap, for the reason that the voter presumes, or he has a right to presume, that he is registered. He has lived in the precinct the time required by law; he has paid his tax; the assessor has been to his house; he knows his name ought to be on the registry list, and he goes up to the ballot-box with the ballot in his hand. They take his ballot and deposit it in the ballot-box, and afterward, when he cannot furnish the proof, it is contended his vote is an illegal one, while if the election officers had called his attention to it at the moment he could have supplied the evidence required and established his right to vote to the mode prescribed. But that evidence was not demanded. He voted knowing that he had a legal right to vote, but the legal evidence of his right was not required of him by the election officers. And applying the same doctrine as in *Wheeler's case*, "you cannot deprive the legal voter of the right to vote by reason of the failure of the officer to do his duty," and it seems to me that the position is unassailable.

Regulations may be merely directory, and if the officer of election or the voter does not follow them they do not necessarily vitiate the vote when deposited and received.

The present case is a very strong one for the application of that rule, in the absence of any statute making registration a prerequisite, and where the system of registration is so imperfect and loosely managed.

In the record there appears to have been sundry rulings of the magistrate as to admission of evidence, &c., to which exceptions were taken. The course pursued in this respect was manifestly irregular. But this becomes now immaterial and unimportant. The various motions made

by the respective parties as to striking out evidence have been considered and denied either as immaterial or not well grounded.

The alleged want of proper certification to the depositions taken by Robert W. Figg has been rectified by his affidavit and further certificate by way of amendment.

I have paid no attention to attempted personal imputation upon parties and counsel not affecting the evidence.

My opinion, therefore, is that contestant was elected and should have the seat, and I approve of the resolutions attached to the report of Mr. Hazelton, while I dissent from some of the views embodied in that report.

WILLIAM M. LOWE VS. JOSEPH WHEELER.

EIGHTH CONGRESSIONAL DISTRICT OF ALABAMA.

Mr. BELTZHOOVER, from the Committee on Elections, submitted the following as the

VIEWS OF THE MINORITY:

The undersigned are notable to concur in the report of the majority of the committee. The evidence shows that the election was conducted with perfect fairness on the part of Wheeler and his supporters. Indeed, there is no pretense that there was unfairness anywhere except at Meridianville and Lanier's precinct, and the most extraordinary efforts on the part of Mr. Lowe and his attorneys utterly fail to prove any fraud or unfairness at these boxes.

The voluminous character of the record has precluded nearly all the members of the committee from giving it that thorough examination which is necessary to a perfect understanding of the case, and, as a consequence, the report of the majority contains errors, to a few of which we will refer:

1ST.

The majority consider evidence introduced by Mr. Lowe which purports to prove matters which are not set up in the notice of contest, and refuse to consider evidence of matters proven by primary and uncontested evidence which are specifically set up and insisted upon in the answer of the contestee, these matters being such as the law required them to consider, and such as the majority of the committee have considered in other cases during this term of Congress.

2D.

Evidence which the majority in this report say is good and sufficient to establish the allegations of Mr. Lowe they in the same report say is insufficient to support the allegations of Mr. Wheeler.

3D.

Certain witnesses give evidence regarding votes cast for both Mr. Lowe and Mr. Wheeler.

The evidence is precisely of the same character, the votes referred to

are precisely of the same class, the evidence is given by the same witnesses, and in some cases it is given in the same breath and in answer to the same questions, and yet the majority of the committee count the votes for Mr. Lowe and refuse to count the votes which the proof shows were cast for Mr. Wheeler.

Worse than that, the report of the majority counts votes for Mr. Lowe upon statements of witnesses who swear they do not know anything of it personally, and they refuse to count votes for Mr. Wheeler the rejection of which is positively proven.

For instance : Mr. Harraway swears he does not know personally that any Lowe ballots were rejected, but he swears that he does know that a Wheeler ballot was rejected.

On this evidence the majority count 4 votes for Mr. Lowe and refuse to count any votes for Mr. Wheeler.

Mr. Hill, who was illegally examined in chief during the last ten days, when the law only allowed evidence in rebuttal, testified and admitted that his knowledge that 22 Lowe ballots were rejected *was not based upon his actual knowledge, but it was based pretty much upon what a clerk told him.* This illegal evidence was taken at an unlawful time, so that Mr. Wheeler could not take evidence to refute it, and yet the majority, on such evidence, count 22 votes for Mr. Lowe.

We observe six other instances where Mr. Lowe's witnesses testify that ballots cast for Mr. Wheeler were not counted, and yet the majority of the committee refuse to give Mr. Wheeler the benefit of their evidence, although their evidence is precisely the same as the best evidence which is relied upon by Mr. Lowe, and although in one instance alone this failure makes a loss of over 50 votes to Mr. Wheeler.

4TH.

The majority of the committee accept and consider in substantiation of Mr. Lowe's allegations testimony which is secondary in its character, which is contradicted by Mr. Lowe's own witnesses, and which uncontradicted proof shows has been altered and forged since it went into the hands of Mr. Lowe's agents or attorneys. Mr. Wheeler made a proper and reasonable motion to have the forged evidence stricken from the record, but the majority of the committee failed to strike said forged matter from the record.

5TH.

The majority of the committee refused or failed to deduct votes of unregistered voters who illegally voted for Mr. Lowe, giving two reasons therefor :

1. Because they say registration is not required in Alabama.
2. Because there is no evidence which establishes definitely and identically for whom they voted.

The first position was so untenable that it was not assented to by all the members of the committee who voted for the majority report ; and we hereafter will show it to be entirely without foundation.

The second position is positively contradicted by the proofs. In the limited examination we have been able to give to this point we find the names of over 500 of these unregistered voters who the witnesses swear positively voted for William M. Lowe. Some of this evidence is given by Mr. Lowe's witnesses, and by Republicans who swear that they saw the voters hand their ballots to the inspectors with Mr. Lowe's name on said ballots.

This evidence is positive, unimpeached, and unquestioned.

6TH.

The majority of the committee refused or failed to deduct illegal votes of unregistered voters who voted for Mr. Lowe at Courtland and other precincts, where the proof shows there was no person registered "*as required by law*," and consequently there was no legal registration, and Mr. Ranney, of the committee, gives as a reason for this action, and it is the only reason given, that "contestee does not set up a want of legal registration as vitiating the election at any precinct."

In making this statement Mr. Ranney was mistaken.

The following allegations are contained in the answer of the contestee:

Contestee alleges that at the following precincts of Lawrence County, viz, Courtland, Red Bank, &c., * * * 450 persons were allowed to vote, and did vote, for contestant, some of whom had no right to vote at the precincts where they cast their votes, and others who voted at said precincts were not legal voters, and had no right to vote at all.

And contestee also alleges that said persons who voted for contestant at said precincts "did not have a right to vote, for the reason that they had *never been registered as required by law*."

It is here shown that the allegations of Mr. Wheeler emphatically state there was no legal registration at Courtland or that he uses the equivalent words that the persons who voted for contestant had "*not been registered as required by law*."

The deposition of the probate judge of Lawrence County proves that these allegations are correct, and that there was no legal registration at that precinct.

Under a similar registration law the majority of this Committee on Elections decided in the case of Bisbee *vs.* Finley that eight precincts in Brevard County should be rejected, and the proof in that case does not show that the registration in those precincts was as incomplete and illegal as it is shown in this case to have been at the precinct of Courtland.

It is shown by primary evidence that none of the voters at Courtland were registered as required by law, and that with regard to 189 of them there was no pretense at registration, and yet the majority count these illegal votes for Mr. Lowe.

7TH.

The majority of the committee refused or failed to deduct the illegal votes of non-resident persons who voted for Mr. Lowe, although the proof is positive and uncontradicted that such persons voted for Mr. Lowe, and that they were not residents of Alabama, but residents of other States.

The witnesses give evidence regarding this matter similar to the following:

John Wilson was not a resident of Alabama; he lives in Tennessee, and he never pretended to claim this as his home.

Wesley Phillips was a non-resident of the State of Alabama; he lives in Tennessee.

Squire Holsten was a non-resident of the State of Alabama; he lives in Georgia, and is an illegal voter.

John O'Neal was a non-resident of the State of Alabama; claims his home in Georgia.

Berry Blair was a non-resident of the State of Alabama; lives in Tennessee; was an illegal voter.

The witnesses also testified that all the non-residents whose names they gave voted for William M. Lowe, and all these names are found on the poll-lists.

We could go on with these details, but space forbids.

It is evidence of this character which the majority of the committee says is "*not sufficient*."

They also say: "*His [Wheeler] proofs do not sustain his allegations.*"

It appears to us that Mr. Wheeler proved conclusively that minors voted for Mr. Lowe.

Mr. Lewis swears that Jack L. Armestead voted for Mr. Lowe; that he had known him for ten years, and when he first knew him he was not more than six or seven years old. He also swears that Berry Conger voted for Lowe; that he had known him for twelve years, and when he first knew him he was not more than six years old.

On page 894 of the record contestee proved that James Chandler was only eighteen years old. Also, page 899, that Robert Smith was only twenty years old, and that Ephraim Springer was only twenty years old. All of these persons the proof shows voted for Mr. Lowe.

This is the character of the uncontradicted evidence which Mr. Wheeler produces to show that minors voted for William M. Lowe.

8TH.

At Courtland precinct (the same place where the proof shows that there was no legal registration, and that 180 unregistered persons cast illegal votes for William M. Lowe) the preponderance of evidence decidedly shows that none of the inspectors were supporters of the party which sustained Mr. Wheeler, and Mr. Lowe's witnesses are compelled reluctantly to admit that they violated the law which required them to count the ballots *immediately on the closing of the polls*, and that they pretended to be occupied for nine hours in counting about 500 ballots, and then put the counted and uncounted ballots together in a rough box, and that one of their number took the box off and kept it until the next day, when a box was returned which contained some ballots which they counted in an illegal manner, and made a report that Mr. Lowe had received 419 votes and that Mr. Wheeler had received 111 votes.

The proof also shows that this report was false, as the witnesses admit that Mr. Wheeler was polling a large vote—quite as large as that polled by Mr. Lowe—and some of the witnesses testified that he (Wheeler) polled two or three times as many votes as were counted for him.

Mr. Wheeler has proven, by uncontradicted and uncontroverted evidence of Republicans as well as Democrats, that over 200 persons voted for him at that box.

Mr. Wheeler's allegation with regard to this poll conforms to the proof, and we conclude that the box should not be counted.

We respectfully submit that we have never seen a case where the integrity of a ballot-box was more emphatically and essentially impeached, and where justice called louder for action.

9TH.

On the other hand, we now look at the action of the majority of the committee regarding Meridianville box No. 2.

Mr. Lowe in his notice does not ask to have this box rejected, and therefore under the rules laid down by the committee regarding Whee-

er's defense they could not reject it; but above and beyond this the proof shows that there was no violation of law at this box.

Mr. Forbes, Mr. Lowe's special friend, was present as supervisor, the votes were counted strictly as provided by law, and the supervisor and the inspectors made their respective reports, each stating that Wheeler received 57 and Lowe received 47 votes.

The proof shows that this vote was proportioned substantially the same as it was at the election three months previous, when the vote for governor was: Cobb, Democrat, 42; Pickens, Opposition, 34.

The testimony of Mr. Trehitt, Mr. Roper, and Mr. Hawk, who were officers of the election which we are now considering, and whom the proof shows to be gentlemen of high standing, shows that the vote was counted as it was cast, and that no fraud could possibly have been practiced at these polls.

The majority of the committee cite against the sworn report of officers, and against the evidence of men of high standing and character, the testimony of two colored men, of whom one is impeached by the direct testimony that his character is so *bad that he is not worthy of belief under oath*, and both are impeached by their own contradictions and by credible testimony of other witnesses. But in addition to all this the evidence of the contestant is not of a character to justify the committee in receiving it to prove that there was any fraud or unfairness at this box, and taking all the proof together it shows no ground for its rejection.

The record also shows that during the ten days allowed by law for evidence to be taken for contestant in rebuttal Mr. Lowe's attorneys served a false notice upon Mr. Wheeler, stating they would take evidence of some fifty-five witnesses at or near Pleasant Hill.

This notice designated no definite place, and Mr. Wheeler caused a demand to be served upon them, asking for more specific information regarding the locality where the evidence would be taken.

This polite and proper request was not complied with.

Mr. Lowe's attorneys went to a place seven miles from Pleasant Hill and proceeded to take evidence *ex parte*.

After some twenty witnesses had been examined in this way, an attorney employed by Mr. Wheeler succeeded in hunting down this secret place of taking evidence; but even then, after finding the commissioner, he was positively refused the right to cross-examine witnesses.

Worse than that, the record shows that Mr. Lowe's attorney (a nephew of Mr. Lowe) wrote down the evidence himself, and wrote it falsely.

By such methods there have been produced 55 depositions which purport to show that 55 men voted for Mr. Lowe.

Upon these illegal and fraudulently obtained and criminally conducted proceedings the majority of the committee count 55 votes for Mr. Lowe.

This box will be discussed more fully hereafter.

10TH.

At Lanier's box the evidence shows that it was impossible for any fraud to have been practiced by any one in the interest of Mr. Wheeler.

Mr. Lowe's friend swears they could not have counted the ballots in the shop where the election was held, and he swears that he "took charge of the box," and carried it to the store of Deputy United States Marshal Lanier, who was appointed to take charge of the election by Mr. Lowe's friend Marshal Sloss.

The box remained locked up in the side room of Mr. Lanier's store for about an hour, and Mr. Lanier, who was a Republican, swears that no one could possibly have had access to it while it was there.

The majority of the committee, however, reject this box, without a request to that effect in the contestant's notice, and then, still without a request, and without a particle of legal evidence, count for Mr. Lowe 128 votes, and give Mr. Wheeler none, although 132 votes were cast and counted for him, and Mr. Lowe's own witness swears that some 30 votes were cast for Mr. Wheeler.

We call attention to these things to show that the honorable gentlemen who compose the majority of the committee have been imposed upon by some one, as we feel they never would have made this report had the facts been understood by them.

The majority of the committee violate all precedent in counting 16 votes for Mr. Lowe at Kinlock box.

There is no return from this box, and there is no way of learning, from the proof, that there was any election held at said place.

11TH.

The majority of the committee receive and consider as good evidence papers which are not depositions.

More than one hundred of these papers, which are called depositions, do not show that the witnesses were sworn. One hundred and fifty are without any pretense to a certificate of a commissioner, and several of them have no legal signature. Yet upon such fugitive papers the majority of the committee conclude to deprive a fellow-member of his seat in Congress.

The record shows that the vote, according to the official returns, was:

| | |
|-----------------------------------|---------|
| For Joseph Wheeler..... | 12, 808 |
| For Wm. M. Lowe | 12, 765 |
| <hr/> | |
| Majority for Joseph Wheeler | 43 |

Mr. Wheeler's election is contested on the following grounds:

1. The contestant claims that 525 votes were cast for him, which he claims were illegally excluded from the canvass by the inspectors of election in fifteen different precincts, as follows:

| | |
|----------------------------|-----|
| Big Creek | 7 |
| Chickasaw..... | 8 |
| Courtland | 65 |
| Danville..... | 42 |
| Decatur | 3 |
| Elkmont..... | 56 |
| Falkville | 97 |
| Florence | 4 |
| Green Hill..... | 22 |
| Huntsville..... | 61 |
| Kash's | 2 |
| Madison | 33 |
| Meridianville (No. 1)..... | 2 |
| Owen's Cross Roads..... | 31 |
| Poplar Ridge | 41 |
| Russellville..... | 51 |
| <hr/> | |
| | 525 |

2. Although the contestant does not demand it in his notice of contest, the majority of the committee reject, for his benefit, the return of Lanier precinct, in Madison County, which gave the contestant 57

and the contestee 142 votes, and they give him 128 votes alleged to have been proven by the depositions of witnesses, the result being to deprive the contestee of 142 votes and to add 71 to the votes of the contestant.

3. Although the contestant does not demand it in his notice of contest, the majority of the committee reject, for his benefit, the returns of Meridianville precinct No. 2, which gave the contestant 47 and the contestee 57 votes, and the majority of the committee give him 55 votes, alleged to have been proven by the testimony of witnesses, the result being to add 8 to the contestant's votes and to deprive the contestee of 57.

4. Although the contestant does not demand it in his notice of contest, the majority of the committee gave him an addition of 10 to the votes officially returned for him from the precinct of Cave Spring.

5. Although the allegation in the notice of contest does not justify it, and although Mr. Lowe's proof on the point is secondary, and conflicting, and contradictory, and although the proof regarding Mr. Wheeler's votes at that poll are precisely the same as the proof regarding Mr. Lowe's votes, the majority of the committee count 76 votes for Mr. Lowe at Flint precinct, and they refuse to count any votes for Mr. Wheeler.

The returned vote being changed in accordance with these claims, the following is presented as a statement of the result:

| | |
|-------------------------------|---------|
| Wm. M. Lowe..... | 13, 456 |
| Joseph Wheeler | 12, 609 |
| <hr/> | |
| Majority for Wm. M. Lowe..... | 847 |

The contestee denies most of contestant's allegations, and on the other hand insists, in his answer to the notice of contest, that the following votes were illegally cast for the contestant, and demands their rejection by the House of Representatives:

| | |
|---|--------|
| 1. Ballots illegal in form, including 1,294 ballots which are printed so as to be read as plainly on the back as on the face | 3, 028 |
| 2. Votes of unregistered persons, exclusive of those who voted at Courtland | 1, 200 |
| 3. Votes of non-residents | 81 |
| 4. Votes of convicts..... | 20 |
| 5. Votes of minors..... | 16 |
| Kinlock box..... | 16 |
| Courtland box No. 2 (contestant's majority)..... | 308 |
| <hr/> | |
| | 4, 669 |

The contestee, accordingly, gives the following as a correct statement of the result:

| | |
|----------------------------------|---------|
| Joseph Wheeler | 12, 808 |
| Wm. M. Lowe..... | 8, 096 |
| <hr/> | |
| Majority for Joseph Wheeler..... | 4, 712 |

Mr. Wheeler also claims that the Greenbrier box which gave Mr. Lowe a majority of 223, and Pleasant Site box which gave Mr. Lowe 13 majority, and Frankfort which gave Mr. Lowe a majority of 17, should not be counted. Mr. Wheeler alleges that the polls were under the control of Mr. Lowe's friends, and that they were not kept open as required by law, causing loss of many votes to contestee; and also, that at Greenbrier there was illegal voting for Mr. Lowe, and that the inspectors destroyed the poll-lists, and by other means violated the law

so as to deprive Mr. Wheeler of the means of proving the illegal votes which were cast at that box.

Mr. Wheeler also alleges that the entire vote of Madison County, which gave Mr. Lowe 676 majority, was illegally returned, and should be rejected. Mr. Wheeler also alleges that Triana box, which gave Mr. Lowe 252 majority, was not kept open as required by law, whereby contestee lost many votes.

The several claims of the respective parties will be considered in their order.

II.

BALLOTS ILLEGAL IN FORM.

The contestant's claim that 525 ballots offered for him in a form described were illegally excluded by the inspectors of election is met by the contestee as follows :

(1.) The contestee insists that ballots of the form described were illegal, and ought to have been excluded by the inspectors.

(2.) He denies that any such ballots were, in fact, rejected, and asserts that the depositions by which the contestant attempts to prove their rejection are inadmissible, because they were not certified by the officer before whom they purport to have been taken, nor reduced to writing in his presence.

(3.) He sets up a counter-claim, to the effect that 3,028 ballots canvassed for the contestant were illegal, because they contained the designations of eight offices unknown to the laws of Alabama, and that of these 3,028 ballots, 1,294 were illegal, for the further reason that they were so printed that their contents were distinctly visible on the outside to the inspectors and bystanders when the ballots were folded.

(1.) In support of his position that the ballots in controversy were illegal and ought to have been rejected the contestee urges the following considerations :

The ballots were in this form:

FOR ELECTORS FOR PRESIDENT AND VICE-PRESIDENT:

STATE AT LARGE.

JAMES M. PICKENS.

OLIVER S. BEERS.

DISTRICT ELECTORS.

1st District—C. C. McCALL.

2d District—J. B. TOWNSEND.

3d District—A. B. GRIFFIN.

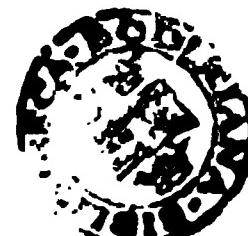
4th District—HILLIARD M. JUDGE.

5th District—THEODORE NUNN.

6th District—J. B. SHIELDS.

7th District—H. R. MCCOY.

8th District—JAMES H. COWAN.



FOR CONGRESS—EIGHTH DISTRICT.

WILLIAM M. LOWE.

The following ballot is in the form prescribed by the laws of Alabama. It is similar in form to 12,808 ballots cast for the contestee:

*For Electors for President
and Vice-President of
the United States.*

GEORGE TURNER.
WILLARD WARNER.
LUTHER R. SMITH.
CHARLES W. BUCKLEY.
JOHN J. MARTIN.
BENJAMIN S. TURNER.
DANIEL P. BOOTH.
WINFIELD S. BIRD.
NICHOLAS S. McAFFEE.
JAMES S. CLARK.

*For Representative in
Congress from the Eighth
Congessional District:*

JOSEPH WHEELER.

Two of the offices designated on the illegal ballots are offices of Presidential electors for the State at large, and two of the candidates named are candidates for those offices. Eight of the offices designated are offices of district electors of President and Vice-President, for eight different districts in the State; and eight of the candidates named are candidates for those offices.

The Alabama statute declares that—

The ballot must be a plain piece of white paper, without any figures, marks, rulings, characters, or embellishments thereon, not less than two nor more than two and one-half inches wide, and not less than five nor more than seven inches long, on which must be written or printed, or partly written and partly printed, only the names of the persons for whom the elector intends to vote, and must designate the office for which each person so named is intended by him to be chosen, and any ballot otherwise than described is illegal and must be rejected.

This law prescribes four distinct requirements for the ballot:

- (1.) It must be a plain piece of white paper, without any figures, marks, rulings, characters, or embellishments thereon.
- (2.) It must be not less than 2 nor more than $2\frac{1}{2}$ inches wide, and not less than 5 nor more than 7 inches long.
- (3.) It must contain only the names of the persons voted for and the designations of the offices for which they are "intended to be chosen."
- (4.) The names of the candidates and the designations of the offices are to be written or printed, or partly written and partly printed.

If the legislature had merely prescribed the form of the ballot, without declaring those cast in any other form to be illegal, or commanding their rejection, then, of course, it would be a question whether the requirement of the statute, that the ballot must contain only the names of the candidates and the designations of the offices, is directory or mandatory. And to the decision of that question such authorities as Mc-

Kenzie v. Braxton, Smith, 19, would be applicable. But when the law makes a ballot not cast in a prescribed form illegal and requires its rejection, there is no place for the question whether the statute is mandatory or directory. The ballot which is not in the prescribed form is illegal, and *must be rejected*, because the law in terms declares it to be illegal and commands its rejection.

The legislature of Alabama, exercising a power expressly conferred by the Federal Constitution, had prescribed the mode of choosing Presidential electors as follows :

On the day prescribed by this code there are to be elected, *by general ticket*, a number of electors for President and Vice-President of the United States equal to the number of Senators and Representatives in Congress to which this State is entitled at the time of such election.

Under this statutory provision there could be no choice of "district elector" for the "first district," or "second district," or for either of the other eight districts designated. The ballots in question each contained the designations of eight different offices unknown to the law; that is to say, the offices of district electors for the eight districts of the State. They were deposited in the ballot-boxes in violation of the requirement of the statute that the ballot shall contain only the names of the candidates and the designations of the offices.

It is submitted, as an incontrovertible proposition, that this statutory provision, for the choice of Presidential electors, makes the office of each and every Presidential elector an office for the State at large, and that the office of district elector is unknown to the law of Alabama. It is submitted, as a second incontrovertible proposition, that the ballots in question were ballots for two electors from the State at large, and for eight district electors, one for each of eight districts. If these two propositions are correct, so also must be the conclusion that eight of the offices designated on these ballots are unknown to the laws of the State, and that the designation of these eight offices was a violation of that requirement which excludes from the face of the ballot everything except the names of the candidates and the designation of the offices voted for, and that, therefore, under the law, it was the duty of the inspectors to reject these ballots.

This would be all different in the State of Massachusetts. For the law of Massachusetts contains a provision unknown to the law of Alabama. It is that—

The names of all the electors to be chosen shall be written on each ballot; and each ballot shall contain the name of at least one inhabitant of each Congressional district into which the commonwealth shall be then divided, and shall designate the Congressional district to which he belongs. (Pub. Stat. Mass., 1882, p. 90.)

The effect of this statutory enactment is that two of the Massachusetts electors are chosen from the State at large, and the others, although chosen by the people of the whole State, are *district electors*, chosen not from the State at large, but from the several districts. In Massachusetts the ballots now under consideration would be in exact conformity with the requirements of the law; and a Massachusetts statute, commanding the rejection of ballots containing designations of offices unknown to the law, would not affect ballots like those alleged to have been rejected in this case.

For precisely the same reasons, ballots like these would be legal in the States of Iowa, Tennessee, Missouri, Virginia, and North Carolina.

If, then, the statutes of Massachusetts, Iowa, Tennessee, Missouri, Virginia, and North Carolina commanded the rejection of all ballots not fashioned in conformity with the requirements of law, they would

not affect ballots like those alleged to have been rejected in the late election in Alabama, because such ballots would conform to the statutory requirements of those States.

The laws of Illinois, New York, South Carolina, Michigan, and Wisconsin, like that of Alabama, provide that the Presidential electors shall be chosen by "general ticket." The statutes of Mississippi and Nebraska provide that they shall be chosen from the "State at large." If the laws of these seven States provided, as do the laws of Alabama, that all ballots containing anything beyond the names of the candidates and the designations of the offices should be rejected, then ballots like those alleged to have been rejected, in the case now under consideration, would necessarily be rejected in those States. But no law, in either of those seven States, requires the rejection of ballots for the reason that they contain more than the names of the candidates and the designations of the offices. It follows, therefore, that in these seven States, as well as in the States of Massachusetts, Iowa, Tennessee, Missouri, and Virginia, these rejected Alabama ballots would have been good.

They would also have been good in all the other States of the Union except Alabama. For in none of the other States is there any statute requiring the Presidential electors to be chosen by general ticket or from the State at large. In all the other States the statutes provide that Presidential electors shall be chosen, but fail to determine whether they are to be chosen wholly from the State at large, or partly from electoral districts. They do not make illegal the offices of district electors, as does the law of Alabama. The case of Alabama therefore stands upon statutes peculiar to that State.

It is said that the objectionable matter on these ballots does not constitute figures, marks, rulings, characters, or embellishments, in the sense of the statute. Even if this be admitted for the sake of the argument, it does not meet the objection now under consideration, which is not that they were fashioned in violation of the clause of the statute prohibiting figures, marks, rulings, characters, and embellishments, but that they presented a violation of that clause which provides that the ballot shall contain only the names of the candidates and the designations of the offices.

But to ascertain whether these ballots did have distinguishing marks, let us refer to the evidence of the witnesses whom the contestant introduced, and by whom he claims to have proven the rejection of these ballots.

Mr. Hopkins, a witness for the contestant, testifies (see bottom of page 131 and top of page 132) that the ballots which he says were rejected could be identified from the outside when folded four times.

His evidence is as follows:

Q. When folded in four thicknesses, could you see at a distance of three feet that that ticket had something on it besides the names of the persons voted for and the offices for which they were to be chosen?—A. Yes, sir; I could.

Q. Please examine the ticket and see if it is the ticket that you made an exhibit to your deposition.—A. Yes, sir; it is.

Q. Please examine those three tickets folded, and say if they are not the kind of tickets that were rejected, and say if you cannot identify them from the outside when folded four times?—A. These tickets are similar to the tickets that were rejected for being numbered, and I can designate them when the printing is folded inside and the ticket folded in four thicknesses.

These ballots are in evidence, and it will be observed that they are of the least objectionable class of Greenback ballots found in the record.

Ira G. Wood, a witness and supporter of Mr. Lowe, and an officer of

the election, testifies as follows regarding the ballots which he says were rejected (see Record, page 304, near bottom):

Q. Your eyesight is a little defective and infirm without your glasses?—A. Yes, sir; I can read large print; I do not do it, however, without my spectacles, but I can.

Q. Can you see the words first district on that ticket (handing witness a ticket)?—A. Yes, sir.

Q. Can you see the words first district on it?—A. Yes, sir.

Q. Can you see the words first district on the back when folded with the printing inside?—A. Well, I wouldn't know that unless my attention was called to it.

Q. Could you read it if your attention was called to it?—A. I suppose I could if my attention was called to it.

Q. Can you, when the ticket is open, read the words first district without your glasses?—A. Yes, sir.

Q. When the ticket is closed now, with the printing inside, can you see by reading backwards, when your attention is called to it, the words first district; wouldn't you be willing to swear there was a D?—A. Yes sir.

If feeble old men could identify the ballots, when folded, which Mr. Lowe claims were rejected in the railroad towns, it is evident that it would have been impossible for such ballots as Mr. Lowe's witnesses put in evidence, and swear were used in Franklin County, to have escaped the scrutiny of the party managers.

The contestee, in his answer, denied the allegation of the contestant regarding the rejection of ballots, and the contestant has failed to prove by legal evidence that any ballots were rejected by the inspectors. We think that none of the evidence by which he attempts to prove these facts is legal. The witnesses merely give their recollection on the subject. Many of them made out returns one or more days after the election was over, and in many cases they admit that even these returns were made out from hearsay, and many of them show by their evidence that their entire knowledge on the subject is hearsay. For instance, on page 62 of the contestant's brief, he claims that 4 Lowe votes were rejected at Florence; but we think there is not a particle of proof to sustain this. He quotes the evidence of Judge Harraway (p. 908), and Judge Harraway states that he knows nothing personally about it.

On the same page of his brief he claims that 22 Lowe votes were rejected at Green Hill. There is no legal evidence to sustain this. The witness on whom Mr. Lowe relies (William H. Hill) testifies, near bottom of page 1389, that he does not know that 22 ballots were rejected. He admits that immediately after the election he made an affidavit before Commissioner Bone that 15 ballots were rejected at that box; he admits that he knows nothing about it except what a man told him; there is no other proof regarding that box.

Again, Edward C. Lamb, page 150, testifies as follows:

Q. Did you count these 42 ballots yourself?—A. No, sir.

Q. Then your knowledge—is it not true that your knowledge of there being 42 is simply hearsay?—A. No, sir; I seen on their tally sheets.

Q. And yet you swear that there were 42 votes rejected with Lowe's name on them, without ever seeing them, and without ever counting them?—A. I seen them lying aside there when they were recounted.

Q. Is it true that you saw them all in a bunch?—A. Yes, sir; when they were laying them down or counting them out.

Q. Is it true that you examined every ballot, and saw it have on it the name of William M. Lowe?—A. No, sir.

Such evidence as this proves nothing.

The law of Alabama (see Code, par. 288, printed page 1215 of the record in this case) provides that all rejected ballots shall be rolled up by the inspectors and labeled as rejected ballots, and that they shall be sealed up together with the other ballots, and securely fastened up in the box from which said ballots were taken when they were counted.

The answer of the contestee distinctly alleged that where votes for William M. Lowe were discarded, it was so stated in the returns made by the inspectors. In no instance did the contestant put these returns in evidence, or give any reason for not doing so. Nor did he put the ballots which he claimed were rejected in evidence, nor does the record show that he gave any reason for not doing so.

Furthermore, not one of the 49 depositions was in any way certified by any commissioner.

None of the depositions have any certificate of any kind whatever.

It is provided in the Revised Statutes of the United States as follows:

SEC. 127. All officers taking testimony to be used in a contested-election case, whether by deposition or otherwise, shall, when the taking of the same is completed, and without unnecessary delay, *certify* and carefully seal and immediately forward the same, by mail, addressed to the Clerk of the House of Representatives of the United States, Washington, D. C.

The notary who took the so-called depositions of the witnesses named above, took, in all, the depositions of 177 witnesses, a part as testimony in chief and a part as testimony in rebuttal. He certified none of the 177 depositions, except those of J. H. Bone, W. M. Lowe, R. H. Lowe, and J. H. Sloss. His only certificate is that which (itself irregular and insufficient) is affixed to the deposition of W. M. Lowe, the contestant, on page 1263, wherein he certifies (irregularly) the depositions taken under "the notice to contestee." Under that notice, which is printed on page 1264, only the depositions of J. H. Bone, W. M. Lowe, R. H. Lowe, and J. H. Sloss were taken.

The only certificates in the entire record which refer to the contestant's testimony are as follows: Page 205, a certificate of Commissioner Thomas C. Barclay, reciting that it is the certificate to the deposition of James Jones, John Kibble, Alex. Jamar, and George Ragland, taken at Lanier's. It is dated January 26, 1881.

Page 293, the certificate of Commissioner A. C. Bentley, who certifies to the deposition of 55 witnesses, whose names he gives, and none of which are the names of any of these 49 witnesses. It is dated April 1, 1881.

On page 338 we find certificate of Commissioner Archibald W. Brooks, which mentions eleven witnesses, none of whom are included in the 49 referred to. It is dated May 12, 1881.

On page 402 is the certificate of Commissioner Amos R. Moody, which is attached to the deposition of seven (7) witnesses, and it certifies to the depositions thereto attached, but none of the names are those of any of the 49 witnesses referred to. It is dated March 15, 1881.

On page 460 is the certificate of Commissioner E. P. Shackelford, attached to the deposition of W. W. Simmons, and on page 462 is the certificate of same commissioner, attached to deposition of Alex. Heflin. Both are dated March 11, 1881.

On page 1263 we find a certificate of Commissioner Robert W. Figg. It certifies to the depositions of the witnesses named in the notice to the contestee.

The certificate is dated March 16, 1881, and is attached to the deposition of William M. Lowe, and the notice also attached and referred to in the certificate contains only the names of James H. Bone, William M. Lowe, Richard H. Lowe, and Joseph H. Sloss. (See page 1264.)

The next certificate is that of Commissioner William T. Farley, on page 1361. It is dated March 28, 1881, and purports to be, and is, at-

tached to the deposition of twelve witnesses, all of whom are mentioned in the certificate.

The last certificate is that of Commissioner Robert Andrews, on page 1399. It purports to be a certificate to nine witnesses, all of whom are named in the certificate.

There is no other certificate in the record except those attached to the depositions of the contestee.

The only proof of the rejection of these votes is to be found in what are claimed to be the depositions of T. W. White, 37; W. L. Goodwin, 42; N. Davis, 47; T. B. Hopkins, 130; L. Bibb, 137; G. W. Maples, 140; W. L. Christian, 143; R. J. Wright, 148; E. C. Lamb, 150; N. Whittaker, 153; W. G. Smith, 370; A. Gandy, 373; H. A. Skeggs, 376; J. Y. Ferguson, 382; W. A. Pinkerton, 339; A. G. Smith, 343; A. C. Witty, 346; W. McCulley, 349; J. E. Seal, 394; D. N. Fike, 397; T. C. Walker, 404; W. J. Gibson, 496; W. W. Simmons, 496.

The contestee objected to these depositions at the commencement of the present session of Congress on the ground that they were not certified according to law, and has persisted in that objection until the present time.

Again, none of these alleged depositions were reduced to writing in the presence of the notary.

The provision of the Revised Statutes of the United States is:

SEC. 122. The officer shall cause the testimony of the witnesses, together with the questions proposed by the parties or their agents, to be *reduced to writing in his presence* and in the presence of the parties or their agents if attending, and to be duly attested by the witnesses respectively.

The corresponding provision of the judiciary act of 1789 is in the following words:

And every person deposing as aforesaid shall be carefully examined and cautioned and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given after the same shall be reduced to writing, which shall be done only by the magistrate taking the deposition, or by the deponent in his presence.

The provision that the deposition must be reduced to writing in the presence of the officer is common to the contested-election law and the judiciary act of 1789. It is obvious, therefore, that decisions of the Federal courts on the provision of the judiciary act for the writing out of the deposition will be authorities in cases which may come before this committee under the corresponding provision of the statute relating to contested elections.

In *Bell v. Morrison*, 1 Peters, 351, Judge Story, delivering the opinion of the court, held that under section 30 of the judiciary act a deposition is not admissible if it is not shown that the deposition was reduced to writing in presence of the magistrate.

The same doctrine is maintained by the following authorities: *Edmondson v. Barret*, 2 Cranch C. C., 228; *Pettibone v. Derringer*, 4 Wash., 215; *Rayner v. Haynes*, Hempst., 689; *Cook v. Burnley*, 11 Wall., 659; *Baylis v. Cochran*, 2 Johns. (N. Y.), 416; *Summers v. McKim*, 12 S. & R., 404; *United States v. Smith*, 4 Day, 121; *Railroad Co. v. Drew*, 3 Woods C. Ct., 692; *Beale v. Thompson*, 8 Cranch, 70; *Shankriker v. Reading*, 4 McL., 240; *United States v. Price*, 2 Wash. C. Ct., 356; *Hunt v. Larpin*, 21 Iowa, 484; *Williams v. Chadbourne*, 6 Cal., 559; *Stone v. Stillweil*, 23 Ark., 444.

This objection applies to the 49 depositions which it is claimed were taken in Huutsville before R. W. Figg, esq., during the forty days allowed by law for contestant to take testimony-in-chief; and to 110 depositions which purport to have been taken at Lanier's during the period allowed by law for contestant to take evidence in rebuttal.

The record does not show that any of these so-called depositions were reduced to writing in the presence of the officer before whom they purport to have been taken.

On the contrary, the proof shows this was not done. The evidence, page 1116, shows that these so-called depositions were taken down in short-hand, and that they were afterwards written out in long-hand in the absence of the officer, and page 1125 shows that important exhibits were attached to the depositions which the witnesses did not see.

The motions which are supported by affidavits should be sustained, and the 49 alleged depositions mentioned in said motions should be suppressed; the motion to suppress 110 alleged depositions taken at Lanier's should be also sustained, and those depositions should be suppressed.

The "Views of Mr. Ranney" contain the following statement:

The course pursued in this respect was manifestly irregular. But this becomes now immaterial and unimportant. The various motions made by the respective parties, as to striking out evidence have been considered and denied, either as immaterial or not well grounded.

If this merely means that the decision of the case on its merits by the Committee on Elections involves a decision of these questions of evidence, and that therefore the duties of the committee on the subject are ended, the statement is accurate enough. But if the meaning is either that the committee has formally acted on these questions of evidence, or that action by the committee, however had, concludes the House of Representatives, so that these questions "have become immaterial and unimportant" in the House, the statement is wholly erroneous. The House is the judge on this point, as on all others involved in the case, and the materiality and importance of these questions in the House is not affected by the action of the committee.

(3.) We now proceed to the consideration of the counter-claim set up by the contestee, to the effect that 1,294 ballots cast for the contestant were illegal, not only because they contained the designations of eight offices unknown to the law but also for the further reason that they were printed on such transparent paper, and with such ink and type, that the contents were visible to the inspectors and bystanders on the outside of the folded ballots.

The statutory provision, as we have seen, is that unless the ballot is "without any figures, *marks*, rulings, characters, or embellishments thereon" it must be rejected. Whatever else may or may not be embraced in the meaning of the term "marks," as here used, that term evidently includes any device or combination of devices which will enable either the inspectors, when they receive a ballot and pass it from hand to hand for deposit in the ballot-box, or the near by-standers, to distinguish it from other ballots. In this sense the term "marks" may include several things or elements. It may apply to a star, cross, line, or circle, or to any other printed form, or to a series or number of forms, placed on the exterior of the ballot, so as to enable the inspectors or bystanders to distinguish it from others. The ballot would in that case be *marked*. It would not be, in the sense of the statute, "without marks." It would fall within the prohibitions of the statute.

But if by the use of such paper and of such type and ink on the face of the ballot as to show the face or a part of it *through* the folded ballot the inspectors and by-standers are enabled to distinguish it from others, then also the ballot is marked, in the sense of the statute, whether the *words* themselves are or are not *legible* on the outside of the folded ballot. It is enough if they are clearly *visible*, so that the ballot may be distinguished from ballots of a different kind.

The following are exact representatives of 1,294 ballots which are proved to have been cast for the contestant and counted for him, and are to be deducted from his vote. These ballots, when folded, are readily distinguishable by the inspectors and by-standers, not only from the ordinary legal ballot, the face of which is not visible through the paper on the reverse side, but also from each other:

FOR ELECTORS FOR PRESIDENT AND VICE

PRESIDENT:

STATE AT LARGE.

JAMES M. PICKENS.

OLIVER S. BEERS.

DISTRICT ELECTORS.

1st District—C. C. McCALL.

2d District—J. B. TOWNSEND.

3d District—A. B. GRIFFIN.

4th District—HILLIARD M. JUDGE.

5th District—THEODORE NUNN.

6th District—J. B. SHIELDS.

7th District—H. R. MCCOY.

8th District—JAMES H. COWAN.

FOR CONGRESS—EIGHTH DISTRICT.

WILLIAM M. LOWE.

FOR ELECTORS FOR PRESIDENT AND VICE

PRESIDENT:

STATE AT LARGE.

W. L. BRAGG.

E. A. O'NEAL.

DISTRICT ELECTORS.

1st District—D. P. BESTOR.

2d District—JOHN A. PADGETT.

3d District—J. F. WADDELL.

4th District—JOHN ENOCHS.

5th District—THOS. W. SADLER.

6th District—J. G. HARRIS.

7th District—F. W. BOWDON.

8th District—H. C. JONES.

FOR CONGRESS—EIGHTH DISTRICT.

William M. Lowe.

FOR ELECTORS FOR PRESIDENT AND VICE-PRESIDENT:

STATE AT LARGE.

W. L. BRAGG.

E. A. O'NEAL.

DISTRICT ELECTORS.

1st District—D. P. BESTOR.

2d District—JOHN A. PADGETT.

3d District—J. F. WADDELL.

4th District—JOHN ENOCHS.

5th District—THOS. W. SADLER.

6th District—J. G. HARRIS.

7th District—F. W. BOWDON.

8th District—H. C. JONES.

FOR CONGRESS—EIGHTH DISTRICT.

William M. Lowe.

These transparent ballots were used in mountain counties and precincts, where the law was not well understood, and where there was the least risk of detection and exposure of this cunning device for destroying the secrecy of the ballot. The following are the citations of testimony which show that 1,294 ballots of this kind were counted for the contestant, at thirty-four different precincts in the district:

| Page of record. | Name of witness. | Name of precinct or box. | Number illegal ballots cast for William M. Lowe. |
|-----------------|-------------------------|--------------------------|--|
| 399 | R. H. Ransom | Waco | 20 |
| 400 | C. M. Taylor | Mountain Spring | 4 |
| 401 | W. M. Smith | Newburg | 38 |
| 401 | P. Barker | do | |
| 402 | W. Burgess | Pleasant Site | 60 |
| 740 | A. J. Barker | Bellefont | 71 |
| 742 | J. F. Skelton | Hunt's Store | 20 |
| 746 | Robt. Skelton | Scottsboro' | 157 |
| 749 | F. M. Chandler | Berry's Store | 85 |
| 751 | N. H. Bridges | Bishop's | 56 |
| 752 | Wm. C. Hitch | Kirby's Mills | 35 |
| 755 | J. H. Young | Larkinsville | 33 |
| 757 | F. J. Robinson | Nashville | 127 |
| 759 | J. M. Reid | Collins | 44 |
| 763 | R. M. Seay | Hawk's Spring | 38 |
| 767 | J. J. Overdeer | Kash'n | 74 |
| 775 | J. T. Gilbreath | Davis' Spring | 38 |
| 807 | J. H. Hundley | Mooresville | 11 |
| 809 | W. K. Rainey | Slough's | 1 |
| 808 | F. M. Reeves | Hartsell's | 80 |
| 1002 | J. Brown | Rock Creek | 80 |
| 1004 | W. C. McKenney | Wheeler's | 36 |
| 1006 | W. M. Turner | Cherokee | 11 |
| 1017 | John Askew | Saint's | 50 |
| 1018 | W. C. Summers | do | |
| 1024 | Fox Delony | Leighton | 3 |
| 1113 | G. G. Wiggins | Hillsboro' | 90 |
| 1130 | O. H. Reid | Brickville | 19 |
| 1132 | J. M. Gray | Red Bank | 10 |
| 1160 | L. P. Landers | Landersville | 30 |
| | R. A. Neely | do | |
| 1162 | M. S. Lindsey | Oakville | 83 |
| 1166 | W. H. Bridges | Mount Hope | 154 |
| 1203 | G. W. Ponder | Moulton | 22 |
| 1348 | O. H. P. Williams | Cherokee | 36 |
| 1352 | W. M. Turner | do | |
| | | | 1, 294 |

It is claimed that these ballots ought to be counted for Representative in Congress, if for no other candidate. This would be true, if the statutory provision had been merely that such names of candidates and designations of offices as should be placed on the ballots in violation of the law should be rejected in the canvass. But such is not the provision of the statute. The statutory provision is that if the ballots are not in the form prescribed, the *ballots themselves* shall be rejected.

It seems to us clear that these 1,294 ballots, which not only contained the designations of eight offices unknown to the law of Alabama, but were also *marked ballots*, and, for that reason, peremptorily excluded by a mandatory law of that State, were illegally counted for Mr. Lowe, and are to be deducted from his vote.

The question here presented is a new question. It was not considered by the Committee on Elections in the Mississippi case of *Lynch v. Chalmers*. The differences between the statutory provisions of Mississippi and Alabama, and between the ballots in the two cases, are such that a decision in one of the cases will not, necessarily, furnish a precedent for the other. The Mississippi statute is in the following words:

All ballots shall be written or printed in black ink, with a space not less than one-fifth of an inch between each name, on plain, white printing news paper, not more than two and one-half nor less than two and one-fourth inches wide, without any device or mark by which one ticket may be known or designated from another, except the words at the head of the ticket; but this shall not prohibit the erasure, correction, or insertion of any name by pencil-mark or ink upon the face of the ballot; and a ticket different from that herein prescribed shall not be received or counted.

As we have seen, the Alabama provision is that—

The ballot must be a plain piece of white paper, without any figures, marks, rulings, characters, or embellishments thereon, not less than two nor more than two and one-half inches wide, and not less than five nor more than seven inches long, *on which must be written or printed, or partly written and partly printed, only the names of the persons for whom the elector intends to vote, and must designate the office for which each person so named is intended by him to be chosen; and any ballot otherwise than described is illegal and must be rejected.*

The provisions of the Mississippi law applicable to the case of *Lynch v. Chalmers*, are: (1) That the ballot shall be without any device or mark by which one ticket may be known or distinguished from another except the words at the head of the ticket, and (2) that a ticket different from that prescribed shall not be received or counted. The provisions of the Alabama statute applicable to the case now on trial, are: (1) That the ballot must be without marks, and must contain only the names of the persons for whom the elector intends to vote, and the designations of the offices, and (2) that any ballot otherwise than as described is *illegal* and must be *rejected*. In the Mississippi case the grounds of objection to the ballots were that certain printer's dashes separated different headings of the ticket. In this case the grounds of objection are that the ballots contained the designations of eight offices unknown to the law, and that they were so marked, by the use of peculiar paper, ink and type, as to be readily distinguished from other ballots, even when folded. The differences between the two cases are too palpable to require or justify any comment.

What we have said is sufficient to show that these ballots are illegal but there is other evidence in this case which makes their rejection still more imperative.

THE EVIDENCE SHOWS THAT MR. LOWE'S SUPPORTERS USED THE MARKED BALLOTS, TOGETHER WITH VIOLENCE AND TERRORISM, TO DESTROY SECRET VOTING.

The evidence shows clearly that the using of these ballots in the precincts where it is claimed they were rejected was for the unlawful purpose of preventing a secret ballot.

It is evident that with these ballots secrecy was impossible, and that such ballots could be identified in the hands of the voters.

It is certain that when voters are abused, terrorized, and ostracized for not voting as their leaders dictate, the weaker classes will hesitate before going to the polls with ballots different from those ordered by their leaders.

It was distinctly charged in the answer, and proved by over fifty witnesses, that the supporters of Mr. Lowe had unlawfully maintained a state of terrorism and alarm among the colored persons by threats of harm to their persons and property. (See Record, pages 506, 893, 894, 895, 896, 898, 900, 902, 904, 959, 960, 961, 962, 963, 964, 966, 967, 969, 970, 999, 1000, 1001, 1002, 1020, 1021, 1022, 1023, 1024, 1025, 1066, 1068, 1070, 1072, 1075, 1076, 1079, 1081, 1082, 1085, 1089, 1091, 1093, 1095, 1098, 1102, 1109, 1111.)

This uncontradicted testimony of more than fifty witnesses, including men of all parties and of both colors, shows that by threats of bodily harm, by ostracism, and by fear and intimidation, Greenback leaders have absolutely destroyed freedom of election among the weaker class of colored persons in the eighth district of Alabama.

A colored man, page 1079, swears that if colored men had been left to their own choice nearly all would have voted the Garfield and Wheeler ticket. They would have so voted had it not been for the threats o

the Greenback leaders, and this same character of evidence is found on pages 1067, 1068, 1071, 1073½, 1075¾, 1081½, 1083½, 1085½, 1089¾, 1092½, 1096 1098, 1102¾, 1110, 1112.

It is also in proof (see bottom of page 1095) that two colored men, Peter Walker and John Bell, attempted to become candidates for the legislature upon the Republican ticket, and these Greenback leaders drove them from the town and threatened to kill them.

Also, on this subject, see pages 1066, 1070¾, 1073, 1075, 1079, 1085½, 1087½, 1089½, 1091¾, 1092, 1096, 1098, 1102, 1109¾.

We might stop with the above, but in passing we will call the attention to the evidence of two of Mr. Lowe's witnesses, Wade Blankenship and William Wallace.

These men were party managers for Mr. Lowe. They testified that they required every man to carry his ballot at least a foot and a half from his body. (See bottom of page 224.)

Wallace says, page 234¾:

"I told it to every man. Now, I said, you hold your ticket so I can see it."

Wallace also testified, page 223½, as follows:

Q. You thought it important to examine their wrist and see that there was nothing up their sleeves?—A. Yes, sir; I did.

Q. And you examined each one in this way?—A. Yes, sir. I examined every one that voted the ticket.

Q. You examined each one of the 156 colored men?—A. Yes, sir; I did.

Q. You examined their hands and sleeves to see that there could be no foul play?—A. Well, I did not feel of their arms and sleeves, but I examined their wrists close before I gave them their ticket.

We think the evidence shows beyond question that the policy of the Greenback party was to prevent a secret ballot. Mr. Lowe's witnesses, supporters, and managers swear they examined the wrists of voters, and made them hold the ballot at least a foot and a half from the body to prevent the possibility of their escaping the surveillance of party managers.

This was the plan adopted with colored men, but in localities where possibly objections might be urged to so close inspection of underclothing Mr. Lowe's managers adopted the plan of having the ballots marked so that they could without question identify the ballot in the hands of the voter.

We have examined the ballots, and cannot resist the conclusion that these ballots were issued to enable party managers to destroy the freedom and purity of the *election*, and to *prevent secrecy of the ballot*, and to *place the voter under improper restraint or influence in casting his ballot*.

More than a year prior to November 2, 1880, this law had been construed by an eminent judge of the State of Alabama. His decision was as follows :

Transcript.

THE STATE OF ALABAMA,
Cullman County:

Before Hon. Louis Wyeth, judge of the fifth judicial court.

CHARLES PLATO }
vs. { Contest of election.
JULIUS DAMUS. }

In this case Charles Plato contests the election of Julius Damus to the office of mayor of the town of Cullman, in the county of Cullman, claiming to have been elected to that office himself by a majority of the votes cast at the election held on the first Monday in April, 1879.

The respondent claims to hold the office under the certificate of election issued by the proper officers under the provisions of the "act of assembly to establish a new charter for the town of Cullman." (Pamphlet Laws of 1879, p. 304, section 9.)

On examining and counting the votes it appears that fifty-four of them were cast for the contestant and twenty-seven for the respondent; of these fifty-four votes given for the contestant fifty-two had printed on them, at the top of the ballot, the words "Corporation Ticket," and of the twenty-seven votes cast for respondent three had in like manner printed thereon the same words, and the question for me to decide is whether or not those words rendered the ticket on which they were printed illegal ballots, and such as must be rejected.

The act approved February 12, 1879, Pamphlet Laws, pp. 72, 73, requires that the ballot must be a plain piece of white paper without any figures, marks, rulings, characters, or embellishments thereon, * * * on which must be written or printed * * * only the names of the persons for whom the elector intends to vote, and must designate the office for which each person so named is intended by him to be chosen, and any ballot otherwise than described is illegal, and must be rejected.

The law under which the election now being considered was held, in section 4, Pamphlet Laws, 1879, p. 305, declares "that the election provided for in this charter shall be regulated by the general State election law."

The judicial officer of the State has nothing to do with the propriety of a statute. If not void by reason of a constitutional inhibition, the judicial duty is limited to their construction and enforcement.

These ballots had more than *only* the names of the persons for whom the elector intends to vote, or the designation of the office, and must be rejected because illegal. Such is the mandate of law, and so I must declare it.

It is considered, adjudged, and ordered that the election of Julius Damus as mayor of the town of Cullman, in the county of Cullman, be confirmed, and that the contestant pay the costs of this court.

LOUIS WYETH,
Judge, &c.

JUNE 9, 1879.

THE STATE OF ALABAMA,
Cullman County:

I, Julius Damus, clerk of the circuit court of said county, hereby certify that the foregoing is a full and complete transcript of the decision of Hon. Louis Wyeth, judge of the fifth judicial circuit, from the records of said court, in a cause decided by said judge, wherein Charles Plato was contestant and Julius Damus respondent.

And I further certify that the circuit courts of Alabama are courts of unlimited and appellate jurisdiction, and are the highest courts of the State of Alabama except the supreme court.

Given under my hand and seal of office this third day of January, 1882.

[SEAL—STAMP.]

JULIUS DAMUS,
Clerk Circuit Court of Cullman County, Alabama.

The numerous authorities which the contestee cites in pages 14 to 85 of his brief, conclusively show that Congress and the courts and all law-writers have uniformly held that, under such a law as that of Alabama, ballots like those now under consideration are illegal.

1st. The law of Mississippi provides that all ballots shall be * * * "without any device or mark by which one ticket may be known or distinguished from another."

This leaves room for debate as to whether the marks on the ballots were marks by which one ticket may be known or distinguished from another.

The Alabama law provides that the ballot shall have "*only the names of the persons for whom the elector intends to vote and the designations of the office;*" therefore this law does not give latitude for debate on this question.

The Alabama law and Pennsylvania law (see page 21 of contestee's brief) stand alone in this, *that they alone prohibit anything being on the ballots but the names of candidates and designations of the offices.*

In the report of the case of *Lynch v. Chalmers* the committee say, on page 11:

It need, however, hardly be added that a line of carefully considered cases in the

States, in which such courts have undoubted jurisdiction, so far as they would apply in principle, would go a long way towards settling a disputed point of construction in any State election law. In fact it may be said that it would probably be the duty of Congress to follow the settled doctrine thus established.

On page 10:

Where decisions have been made for a sufficient length of time by State tribunals, construing election laws, so that it may be presumed that the people of the State knew what such interpretations were, would furnish another good reason why Congress should adopt them in Congressional election cases.

And on page 12:

Had the opinion been rendered before the election of 1880, or become one of the settled laws of Mississippi, we do not say but that it would have such weight with us that, though we might disagree with it in logic, we might feel compelled to follow it.

Now, certainly, the facts in this case bring it within the principles here expressed.

The decision of Judge Wyeth was rendered June 9, 1879, seventeen months before the election of November 2, 1880.

1st. It was carefully considered.

2d. The court had undoubted jurisdiction.

3d. It had been made for a sufficient length of time; and above and beyond this, to use the language of Mr. Justice Curtis, 16 How., 279-87, quoted page 11 of Lynch report, it was "*needful to the ascertainment of the right or title in question between the parties.*"

The committee, in *Lynch v. Chalmers*, say:

What we have here remarked does not, of course, apply to the marks or devices ordinarily used on tickets, such as spread eagles, portraits, and the like; those would be considered marks and devices of themselves, and not necessary in the ordinary mechanical art of printing. The use of the latter would be considered a violation of the statute in any aspect of the case, while the use of the former seems to us, in any view of the law, ought to be restricted to an intentional or manifest misuse.

We submit that this reasoning makes the Greenback ballots clearly obnoxious to the statute of Alabama.

The act amending section 274 is a remedial act. Sedgwick, page 309, says:

The words of a remedial statute are to be construed largely and beneficially, so as to suppress the mischief and advance the remedy. It is by no means unusual in construing a remedial statute, it has been said, to extend the enacting words beyond their natural import and effect, in order to include cases within the same mischiefs.

Remedial statutes are liberally expounded in advancement of the object of the legislature. (*Blakeney r. Blakeney*, 6 Port., 109.)

A remedial statute must be construed largely and beneficially, so as to suppress the mischief and advance the remedy. (*Sprowl r. Lawrence*, 33 Ala., 674.)

Let us now see what was sought to be remedied by the amendment to section 274 of the code, approved February 12, 1879.

It is shown by the evidence, p. 1237 of the record, that at elections prior to November 2, 1880, the Democrats used ballots substantially in form to the exhibits above; that is, the exhibits on pages 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, which have the words:

STATE AT LARGE.

District electors.

1st District—
2d District—
3d District—
4th District—
5th District—
6th District—
7th District—
8th District—

And one of which, page 1234, is almost precisely like the ballots which are rejected.

The evidence shows that at previous elections ballots were used substantially like the Weaver and Lowe and Hancock and Lowe ballots, and that the remedy sought was to prevent the use of the very ballots which the Greenback party insisted upon using.

The report of the majority even admits the correctness of our position on this subject.

We are to bear in mind these facts :

1st. The election preceding and nearest to November 2, 1880, when such ballots were used, or could by any possibility have been used, was the election of November, 1876.

2d. The first legislature of Alabama which was elected after the November Presidential election of 1876 proceeded to and did amend section 274 of the code, and did prohibit by the law they enacted the use of the very ballots which the contestant swears were used in November 1876, and preceding elections.

This shows what was to be remedied.

We are also to remember—

3d. That Judge Wyeth construed the law on June 9, 1879, just as we construe it.

4th. That the contestant swears that the August, 1880, canvass was made mainly by attacking this law.

5th. That with all this before them, he and his party managers defied the law they had denounced, and printed ballots and placed in voters' hands ballots which were prohibited by the law of the State.

6th. That nearly 100 witnesses in this case testify that the Greenback party compelled men to vote their ticket by threats and terrorism and that 40 witnesses (including men of both colors and all parties) swear that but for this system of terrorism exercised by the Greenback leaders at least half of the people who voted for contestant would have voted with the party which supported the contestee.

Considering all these things together, we see how necessary it was for contestant to have a ballot which could be distinguished by his party leaders, in order to keep the weaker classes in line and prevent them from secretly voting as they desired.

III.

LANIER'S PRECINCT, MADISON COUNTY.

The contestant, in his summary of the result of the election, rejects the official returns of Lanier's precinct, in Madison County, but at the same time counts for himself 128 votes, which he says he has proven by the depositions of witnesses. There would be no warrant of law for counting these 128 votes for the contestant, even if the fact were, as it is not, that he had successfully assailed the integrity of the returns and had also proved by witnesses that those 128 votes were cast for him. For the law commands that the contestant shall, in his notice of contest, specify particularly the grounds on which he relies. But the notice of contest contains no allusion to any claim of these 128 votes. In truth the notice of contest does not clearly advise the contestee of any purpose on the part of the contestant to demand even the rejection of the Lanier returns. It embraces a charge framed in these words: "That there was fraud and ballot-box stuffing, or a false count and the substitution of Wheeler boxes for Lowe ballots," at this pre-

cinct. It is a charge that one thing or another thing was done. That is no charge known to the law. Having made this alternative and therefore futile charge, he fails to demand a rejection, or any other disposition of the returns. It is obvious, therefore, that under the pleadings the contestant cannot ask the House to reject these returns, or be permitted to appropriate these 128 votes.

The contestee denies that these votes are proved to have been cast for the contestant. In the first place, not one of the depositions offered to prove them is certified by the officer before whom they purport to have been taken, or by any other officer. This fact alone is a fatal objection. Furthermore, the testimony offered to prove that the 128 votes in question were cast for the contestant is testimony-in-chief, and yet it was taken, in violation of the law and against the protest of the contestee, during the period fixed by the statute for taking rebutting proofs. And, finally, the notary, at the instigation of the contestant, unlawfully refused to permit the contestee to cross-examine any of the 106 witnesses, whose so-called depositions are printed on pages 1270 to 1333 of the record.

But these 128 depositions, lame and sickly as they are in point of competency, are as to intrinsic character in a still more disorderly and repulsive condition. The contestant asserts that they show that 128 votes were cast for him for Representative in Congress. But the fact is they only show that 17 votes were cast for him, whereas the returns themselves give him 56. Five of the 128 witnesses testify that they voted for William M. Lowe for President of the United States; twenty-eight testify that they did not know for what office Mr. Lowe was a candidate; seventy-seven testify they only knew by hearsay for whom they voted, and of these latter twenty say that they did not see the faces of the tickets which they voted; and, finally, one of the 128 does not say that he voted at all at this precinct.

Let us first consider for a moment the contestant's Presidential canvass in this precinct. We shall have occasion to observe something of the quality and flavor of the proof by which he aims to impeach the precinct returns.

Scip Shelby, 1290:

Q. State all the persons you voted for, and the offices for which they were running.
A. I didn't vote for any one but Mr. Lowe. *Mr. Lowe was running for President.*

Q. State all the circumstances connected with the giving of the said ticket to you by the said Wallace Toney.—A. He handed me the ticket and told me to put it in the box as he had given it to me.

Q. State if it is not true that you do not know what ticket you voted except from what Wallace Toney told you.—A. It is true.

Tom Smith, 1299:

Q. State all the names of the persons you voted for, and what offices they were candidates for, and when you voted.—A. I voted for Mr. Lowe and Mr. Garfield; *Mr. Lowe was running for President; I do not know what office Mr. Garfield was running for on the 2d November.*

Q. State what Wallace Toney said to you when he gave you the ticket.—A. Handed me ticket and told me to not let it touch my body anywhere.

Q. Was it open or folded?—A. Folded.

Q. State if it is not true that you don't know what ticket you voted except from what Wallace Toney told you.—A. It is true.

Charles Arnett, 1308:

Q. State what time you voted last, who you voted for, and what offices they were running for.—A. I voted last year; I don't know what month; *I voted for Lowe for President.*

Tom Abrams, 1318:

Q. State the names of the persons you voted for, and the offices for which they were running.—A. I voted for Mr. Lowe; *he was running for the Presidency*.

Q. State if it is not true that you didn't know who you voted for except from hearsay; and can you read?—A. It is true; I can't read.

Jere Lanier, 1325:

Q. Whom did you vote for, and the offices for which they were running, and the last time you voted?—A. I voted for Mr. William M. Lowe; I can't tell who else were running; *Mr. Lowe was running for President*; last November.

Q. State if it is not true that you don't know what ticket you voted except from hearsay.—A. It is true.

It is not the right of the contestant to ask that votes cast for him as a candidate for the position of Chief Magistrate shall be counted as votes cast for Representative in Congress.

Let us now turn to the depositions of the voters who swear that they did not know for what office the contestant was a candidate.

Bill Owens, 1275:

Q. State the names of all the persons you voted for on said day, and the offices for which they were running.—A. I voted for William M. Lowe; I did not vote for any one else; *I don't know what office he was running for*.

Q. Is it not true that you do not know what ticket you voted on said day except from what Wallace told you?—A. Yes, sir.

Ruben Lankford, 1276:

Q. When was the last time you voted; for whom did you vote? Name all the persons you voted for, and the offices for which they were running.—A. I voted in November; I voted for Mr. Lowe; I do not know any other names, *nor what offices Mr. Lowe was running for*.

Q. Do you know, except from what Wallace told you, what ticket you voted and who you voted for?—A. No, sir.

Q. Was your ticket open or folded when he gave it to you?—A. Folded.

Nat Donegan, 1281:

Q. Do you know what office Mr. Lowe was a candidate for?—A. *I don't know*.

Q. Please state if it is not true that, aside from what Wallace Toney told you, you do not know what ticket you voted and for whom you voted on November 2, 1880.—A. It is.

Q. Can you read; and was that ticket open or folded when said Toney?—A. Folded; cannot read.

Anthony Lipscomb, 1284:

Q. Do you know what office Colonel Lowe was running for?—A. No.

Q. Would you recognize the ticket you voted that day?—A. I have no knowledge except what I was told.

Q. It is true, then, is it not, that you do not know of your own knowledge, that is to say, aside from what you were told by said Wallace Toney, what ticket you voted on said day, or who you voted for?—A. Yes.

Q. Was said ticket open or folded?—A. Folded.

Wm. Mendum, 1287:

Q. State the names of all the persons you voted for, and the offices for which they were candidates, and when you last voted.—A. I voted for Garfield and Arthur and Willie Lowe. *I don't know what offices they were running for*. November 2, 1881.

Q. State if it is not true that you don't know what ticket you voted except from what Wallace Toney told you.—A. It is true.

C. Anderson, 1287:

Q. State the names of all the persons you voted for, and for what offices they were candidates, and when you last voted.—A. No person but Mr. Lowe. *I don't know what office he was running for*. I voted in November, 1880.

Q. State if it is not true that you don't know what ticket you voted except from what Wallace Toney told you.—A. It is true.

W. Weeden, 1288:

Q. Who did you vote for, and when did you vote, and for what offices were the per-

sions running for ?—A. I voted for Colonel Lowe ; do not know what office he was running for ; don't know anybody else that was running.

Q. Is it not true that you do not know what ticket you voted except what said Toney told you ?—A. It is true.

B. Lightfoot, 1289 :

Q. State the names and offices for whom you voted.—A. Mr. Lowe was the only one. I don't know what office he was running for.

Q. Is it true that you do not know what ticket you voted except from what said Toney told you ?—A. It is true.

Cal West, 1291 :

Q. State the names of all the persons you voted for, and the offices for which they were candidates.—A. I voted for Mr. Lowe ; I don't know what he was running for.

Q. Is it not true that you don't know what ticket you voted except from what Wallace Toney told you ?—A. It is true.

Chas. West, 1291 :

Q. State the names of all the persons you voted for on said day, and the offices they were running for.—A. I don't remember but two, Mr. Lowe and Garfield. Garfield was running for Congress, Lowe was running for the same.

Q. Is it not true that you don't know what ticket you voted except what Wallace Toney told you ?—A. It is true.

Cagy Kelly, 1292 :

Q. State the names of the persons you voted for and the offices for which they were running.—A. I voted for Mr. Lowe and nobody else. I don't know what office he was running for.

Q. State if it is not true that you did not know what ticket you voted except what Wallace Toney told you.—A. It is true.

R. Farley, 1293 :

Q. State all the names of the persons you voted for and the offices for which they were candidates.—A. Mr. Lowe and Garfield, Greenbacker.

Q. State if it is not true that you don't know what ticket you voted at the last election.—A. It is true. I voted the ticket I got from Toney, and don't know what it was.

John Brown, 1294 :

Q. State the names of all the persons you voted for, and the offices for which they were running, and when you last voted.—A. No one but Mr. Lowe that I know of ; I don't know what office he was running for ; I voted last in November, 1880.

Q. State if it is not true that you don't know what ticket you voted for except what Wallace Toney told you.—A. It is true.

John Landman, 1294 :

Q. State the names of all the persons you voted for, and the offices for which they were running, and when you last voted.—A. Lowe was one and Garfield ; I don't know what offices they were running for.

Q. Is it not true that you don't know what ticket you voted except from what Wallace Toney told you ?—A. It is true.

R. Smith, 1295 :

Q. State all the names of the persons you voted for, and the offices for which they were candidates, and when you voted last.—A. Lowe was one and Garfield another. I don't know what offices they were running for ; I voted in November.

Q. State if it is not true that you don't know what ticket you voted except from what Wallace Toney told you.—A. It is true.

Tyson Moore, 1297 :

Q. State the names of all the persons you voted for, and the offices for which they were candidates, and when you last voted.—A. William M. Lowe, Garfield and Arthur; Garfield was running for President ; I don't know what Arthur or Lowe was running for ; I voted in November.

Q. State if it is not true that you don't know what ticket you voted except from what Wallace Toney told you.—A. It is true.

G. Chapman, 1301 :

Q. State the names of all the persons you voted for, and the offices for which they

were candidates, and the last time you voted.—A. I can't state the names of all I voted for; I voted for Mr. Lowe for one; *I don't know what office he was running for.*

G. Adams, 1306:

Q. State the names of all the persons you voted for, and the offices for which they were candidates. What time did you vote?—A. Mr. Lowe is the only one I can recollect. *I don't know what office he was running for.* I voted in November.

Q. State if it is not true that you don't know what ticket you voted except from what Wallace Toney told you.—A. It is true.

Caleb Toney, 1307:

In November I aimed to vote for William M. Lowe; I didn't read the names of all I voted for; *I don't know the offices for which they were candidates.*

Q. Can you read?—A. No, sir.

Q. State if it is not true that you don't know what ticket you voted except from what Wallace Toney told you.—A. It is true.

Wash Lundy, 1308:

Q. When did you vote; for whom did you vote? State the names of all the men you voted for and the offices for which they were candidates.—A. I voted last year; I don't remember the month; I aimed to vote for Lowe; I don't remember the names of any except Mr. Lowe; *I don't know what office he was running for.*

Q. Is it not true that you don't know what ticket you voted on November 2, 1880?—A. It is.

Richard Toney, 1309:

Q. State when you voted last, who you voted for, and for what offices they were running.—A. November; I voted the ticket Wallace Toney gave me; I don't know what was on it.

Jim Lankford, 1313:

Q. Is it not true that you don't know who you voted for?—A. I know nothing except what I was told.

Q. State the names of the persons you voted for, and the offices for which they were running.—A. I voted for Mr. Lowe. I don't know what office he was running for.

Q. Can you read?—A. No, sir.

Mingo Lanier, 1317:

Q. State the names of all persons you voted for and the offices for which they were candidates.—A. I just voted for Lowe; *don't know what he was running for.*

Q. How do you know what kind of ticket it was?—A. I don't know, because I could not read.

Abram Brown, 1322:

Q. State who you voted for and the offices for which they were running.—A. Mr. Lowe; *I don't know what office he was running for.*

Q. How do you know who you were voting for?—A. The man who handed it to me said it was a United States ticket.

Q. Is it not true that you do not know what kind of a ticket you voted?—A. It is true; only so far as I was told.

Ben Lewis, 1327:

Q. State who you voted for and the offices for which they were candidates, and when you voted last.—A. I voted for Lowe; I don't know that I voted for any one else; *I don't know what office he was running for;* I don't know.

B. Eldridge, 1273:

Q. State where you voted last, who you voted for, and for what offices they were running.—A. November; Lowe; *don't know for what offices they were running for.*

Q. Is it not true you do not know what ticket you voted except what Wallace told you?—A. It is.

Anthony Wilkins, 1277:

Q. Do you know what office Colonel Lowe was running for, and whether anybody else was running on the ticket you voted?—A. *I do not know.*

A. Echols, 1285:

Q. Do you know what office Colonel Lowe was running for?—A. *I didn't know.*

Q. Would you recognize the ticket you voted on that day?—A. Yes.
 Q. How would you know it?—A. By the difference of the tickets.
 Q. Please tell me what that difference is.—A. I judge by the leading man that gave me the ticket.

Q. Was the said ticket handed to you folded or unfolded?—A. Folded.
 Q. You don't know, then, from your own personal knowledge, what ticket it was he gave you and who you voted for?—A. I know nothing but what was told me.

We submit that it is not the right of the contestant to demand that the votes of these men, who swear they do not know for what office he was a candidate, shall on their testimony be counted for him as Representative in Congress.

Next comes the procession of 77 colored Republicans who only knew by hearsay whether they voted for the Greenbacker Lowe or the Democrat Wheeler. The following is a statement of their names and of the pages on which their testimony is to be found. Twenty testify that their tickets were handed to them folded up, and they only knew their contents by hearsay, viz:

Fennell, 1264; Lanier, 1266; Fennell, 1268; Davis, 1270; Law, 1277; Holding, 1278; Horton, 1278; Johnson, 1279; Holding, 1279; Williams, 1280; Wiggins, 1281; Jones, 1282; Chapman, 1283; Holding, 1286; Lanier, 1309; Toney, 1309; Fennell, 1320; Rice, 1323; Taylor, 1333; Love, 1339.

Fifty-seven testify that they only knew by hearsay for whom they voted:

Holmes, 1269; Horton, 1271; Erwin, 1271; Ware, 1272; Toney, 1273; Mason, 1274; Gowens, 1274; Lanier, 1290; West, 1291; Walbridge, 1292; Farley, 1293; James, 1295; McVay, 1296; Holding, 1297; Slaughter, 1298; Jamar, 1299; Lundy, 1300; Thompson, 1300; Patten, 1301; Taylor, 1302; Johnson, 1303; Toney, 1304; Miller, 1306; Ragland, 1307; Martin, 1310; Hunter, 1311; Madkins, 1311; Caver, 1312; Watkins, 1313; Dandridge, 1314; Rodgers, 1314; Madkins, 1315; Kelly, 1315; Robinson, 1316; McDonald, 1316; Robertson, 1317; Beadle, 1318; Holding, 1319; Kelly, 1319; Jordan, 1321; Turner, 1322; Bond, 1323; Smith, 1323; Smith, 1324; Lanier, 1325; Tate, 1325; Kibble, 1326; Gladdis, 1327; Harbert, 1329; Clay, 1330; Kibble, 1331; McCrary, 1331; Scruggs, 1332; Jordan, 1333; Ragland, 1335; Wiggins, 1336; Toney, 1338.

The attempt to impeach the return of Lanier's precinct, and to gather up for the contestant 128 votes by means of these depositions, is a failure. If the contestant had in his notice of contest laid a foundation for claiming and proving these votes; if he had in fact proved them; if his depositions had not been inadmissible because not certified; if they had not been rendered inadmissible by the refusal of the notary, on the motion of the contestant, to permit the contestee to cross-examine the witnesses, then the contestant might have some ground on which to stand. But instead of proving that 128 votes were cast for him, he has only proved that 17 were cast for him; that is to say, he has proved 39 less than the number (56) given him by the precinct returns. The result is, that instead of sweeping away the entire returns and then gathering up for himself 128 votes outside of the returns, so as to make the vote of Lowe 128 and for Wheeler none, he has reduced his own vote from 56 to 17, leaving for Lowe 17 and Wheeler 142.

In support of his attack on these polls, the contestant asserts that the inspectors were all Democrats.

But the requirement of the statute is that the county judge shall appoint "three inspectors for each place of voting, two of whom shall be members of opposing political parties, if practicable." This relates only

to the original appointments. There is a further provision for a selection, by the inspectors themselves, to fill a vacancy at the polls. But there is no requirement, express or implied, that, in filling such a vacancy, the inspectors shall look to a representation of opposing political parties on the board.

Now, the provision for the original appointments of these inspectors is not mandatory, but is merely directory. There is no provision that the election shall be void upon failure to comply with the requirement. The fact that the observance of the requirement is made to depend on the practicability of making such appointments, of which practicability the appointing power must of course be the judge, negatives its mandatory character. But then, aside from that, there is in the nature of the provision nothing to justify the rejection of a return for the reason that the county judge failed to give the opposing political parties representation on the board of inspectors.

Mr. McCrary correctly states the general rule, in sections 126 and 200, as follows:

If, as in most cases, the statute simply provides that certain acts or things shall be done, within a particular time, or in a particular manner, and does not declare that their performance is essential to the validity of the election, then they will be regarded as mandatory if they do, and directory if they do not, affect the merits of the election.

Unless a fair construction of the statute shows that the legislature intended compliance with the provisions in relation to the manner to be essential to the validity of the proceedings, it is to be regarded as directory merely.

But then, whether the provision for the original appointment was, or was not, a mandatory requirement that the opposing political parties should be represented on the board, it is certain that the provision for filling vacancies at the polls embraces no requirement, direct or indirect, express or implied, that the vacancies shall be so filled as to secure representation to the opposing political parties on the board of inspectors.

So much for the law. Now for the fact. The fact is that Horton, the inspector against whom the complaint is aimed, had long been a Republican, and there is no proof showing, or tending to show, that he would not have voted for a Republican candidate for the office of Representative in Congress at this election if there had been such a candidate. The fact that he did not vote for the contestant affords not the slightest evidence that he was not a Republican.

It is true that the contestant's witness, Hertzler, says, on pages 178 and 180:

Q. Did Frank Horton try to get people to vote the Democratic ticket?—A. No, sir. Frank Horton, I thought, was a Republican, but from his actions I don't know he was anything; he just simply sat there and didn't say anything. I have only found out since that he was a Democrat.

Q. How did you find out he was a Democrat since the election?—A. I found out by my neighbors that Frank Horton was a Democrat.

Q. Was it not generally understood before the election that he was a Republican?—A. Before the election I didn't know him at all.

Q. You are pretty well satisfied that the charge against Frank Horton is untrue?—A. Yes, sir. The box was not tampered with while the election was going on.

Q. Have you any information that would lead you to believe that Judge Richardson, or the sheriff of this county, or the clerk, had any intimation that Frank Horton was not a sound Republican?—A. No, sir; I don't.

Q. Have you any reason to believe, except the charges that other negroes bring against Frank Horton, that he is not a Republican?—A. Well, I don't understand you; well, I have no reasons that he is not a Republican. He is a Democrat, is what they tell me. I know nothing but what they tell me.

But J. F. Lanier says, on page 561 :

Q. Is it true that all the inspectors here are avowed Democrats ?—A. I believe that Captain High and Mr. Baldridge are Democrats, but Frank Horton has acted with the Democrats in the last two elections, but always claims to be a Republican.

And, on page 563, B. C. Lanier says :

Q. What is your knowledge of Frank Horton's politics ?—A. That he is a Republican, but has acted with the Democrats in the last two elections.

It is also suggested, as a ground for the impeachment of these returns, that there were eleven more ballots than voters.

Now, the fact is that the ballot-box did contain 11 more tickets than the poll-list contained names, and the inspectors deducted 9 from Wheeler's vote and 2 from Lowe's, because 9 Democratic tickets and 2 Republican tickets were folded. This is shown on page 197 of the record.

The law of Alabama does not authorize inspectors to destroy supernumerary ballots before counting out the votes cast for the several candidates. In this respect it differs from the laws of many other States. At the close of the polls the votes for the rejected candidates were therefore counted, and the statement of votes printed on pages 196 and 197 made out *first*. Afterwards the number of votes was compared with the number of voters, and the supernumerary ballots were deducted from the vote of Lowe and Wheeler respectively. The proof of this is to be found on page 177 of the record.

The law requires the inspectors to send up the lists of votes and voters, duly certified. They obeyed the law in this case. The lists are printed on pages 196 and 197 of the record. They show that the voters' names aggregated 188, and that the votes in the box aggregated 199; that the excess of votes over voters was 11; that the votes in the box numbered 57 for Lowe and 142 for Wheeler; that they deducted 2 of the supernumerary ballots from Lowe's vote, and 9 from Wheeler's, and that the vote, so counted, stood : for Lowe, 55, and Wheeler, 133. But the county canvassers overlooked the last paragraph of this statement, and counted for Lowe 56, and for Wheeler 142. These facts deprive the contestant of one vote and the contestee of nine. But they have no other effect on the case.

The deposition of William Wallace, *alias* Wallace Toney, is offered to prove that 128 votes were cast for the contestant, and also to impeach the returns. His deposition is inadmissible, for the reasons which exclude the others. But he is himself impeached by W. F. Baldridge, on page 549, and by W. E. Jordan, on page 566. Baldridge's character is shown to be reliable by the contestant's witness, Hertzler, on page 179. The contestant afterwards examined 126 witnesses, and made no attempt to vindicate the character of Wallace.

In support of his attack on these returns the contestant also charges that there was delay in the opening of the polls and in the appearance of the registrar. Hertzler's assertions on this point are overwhelmingly answered by the contestee's witnesses, Baldridge, High, J. F. Lanier, B. C. Lanier, and Jordan.

J. Hertzler testifies, page 174 :

Q. Why were not the polls opened at that box sooner ?—A. They were not opened on account of the registrar not being there, and there was a difficulty among the inspectors as to the appointing a registrar. Mr. Baldridge, one of the inspectors, said that he wouldn't open the polls unless the registrar was there, while the others claimed that they could appoint a registrar; we had the code there, which read that if the assistant registrar wasn't there the inspectors could appoint a registrar who may qualify for that day, and that word Mr. Baldridge, the principal inspector, claimed

that he didn't know that any one there could qualify; that that word meant—he held that word meant—that he would have to go before the justice of the peace or the registrar, who was in Huntsville.

Q. Is it not true that you endeavored to get the inspectors to open the polls before they did open them?—A. Yes, sir; we tried to get the inspectors to appoint a registrar and qualify him until the registrar came that was appointed; that Mr. Baldridge objected to; said that it couldn't be done, and finally Mr. Burwell Lanier, sr., the returning officer, said that if Mr. Baldridge, or any of the inspectors, appointed a man, that he would be responsible; that it was right; and then Mr. Baldridge did appoint Mr. McDonnell and put him right to work, but he was not qualified at all.

W. F. Baldridge, 548:

Q. State where you were on November 2, 1880; and if you held an office that day, please state it.—A. I was at Lanier's precinct, Madison County; was one of the inspectors.

Q. What time did the polls open or what time were they opened?—A. The polls were opened formally a few minutes after eight o'clock.

Q. Were the polls opened by proclamation?—A. They were.

Q. Was there any delay in voting after the polls were opened?—A. There was about two hours.

Q. What caused the delay?—A. The registrar was not there, and it became necessary to appoint one; and after examining the code of Alabama, I found that a registrar could be appointed after ten o'clock. After consultation with the other inspectors we appointed one.

Q. Who was appointed, and by whom was he appointed?—A. After applying to and requesting George Allen, William Allen, and John Jordan and others, including Frank Hertzler, I finally obtained the services of Archibald McDonald to act as registrar.

Q. Did any one send for Wm. B. Matkis? If so, who sent for him and when did you send?—A. William B. Matkis being the regular appointed registrar, and not being present, I did, about nine o'clock, send one Napoleon Powell to the residence of said Matkis to ascertain the reason of his non-appearance. He lives about two and a half miles from Lanier's.

Q. Do you know why W. B. Matkis did not come to Lanier's when the polls opened?—A. He informed me that he had gone to Pond beat the day before; that his horse got loose, and was unable to get home that night, was the reason for his non-attendance at the polls in time.

W. H. High, one of the inspectors, 554, J. F. Lanier, the United States deputy marshal, 559, B. C. Lanier, 563, and W. E. Jordan, 565, corroborate the statements of Baldridge.

The contestant, in further support of his attack on the integrity of the Lanier returns, charges that twisted ballots were voted, and that the box was removed and tampered with before the votes were counted.

It is true that the law of Alabama requires the inspectors to proceed with the precinct canvass as soon as the polls close. But the facts were that it was not practicable to make the precinct canvass in the open blacksmith shop, where the election was held, for neither lights nor fire could be maintained in the shop. The inspectors were unable to secure the use of Lanier's store, which was the building nearest to the blacksmith shop, for the purpose of making the canvass, and they were unable to obtain the use of Lanier's house until after the family had taken supper.

Hertzler's statements on this point are completely met by Baldridge, High, Lanier, and Kibble.

W. F. Baldridge says, 548, 549, 551:

Q. What kind of a house was the election held in?—A. A blacksmith shop without any floor; the planks were put on upright and were secured so as to leave open cracks between them; the cracks have never been covered with strips; it has a large double door reaching from roof to ground. We could not have any light at all when the wind was stirring, and we could not have any fire on account of the smoke, there being no fireplace except the furnace used by the blacksmith; we tried in the morning to have fire, but had to let it go out.

Q. Would it have been practicable or even possible for you to have counted out the ballots in that blacksmith's shop that night?—A. It would not have been practicable or possible, from the fact that we could not have light or fire, and it was cold, too cold to stay in there without fire.

Q. Was there any other shelter which you could have obtained for holding the election than the place where you did hold it?—A. There was not.

Q. Did you count out the ballots at the most convenient place near the place where the election was held?—A. Mr. B. C. Lanier's house was the most convenient place we could get, and he was the returning officer for said election.

Q. Who were present when the ballots were counted out?—A. John Hertzler, the supervisor; B. C. Lanier and James McDonald, clerks; W. E. Jordon, deputy sheriff; William M. High, Frank Horton, and myself, inspectors; and Aleck Kelly, who was the only one present that was not an officer.

Q. Who called out the votes?—A. William M. High and myself.

Q. State how you found the ballots in the box, and state whether or not you found any ballots rolled or twisted together.—A. There were no ballots found in the box that were rolled or twisted together. There were in two or three instances two and three ballots together, not rolled or twisted, but in a condition as if they might have slipped together in the shaking the box. With one exception there were two ballots folded together that indicated they were voted together, and never more than three were found together.

Q. State the position of the three ballots which you say you found together.—A. They were folded separately, and might have slipped together in shaking the box.

Q. Were the three ballots you refer to as being found together in such a condition that they would fall apart without unfolding them?—A. Those that I took out could have done so.

Q. Were or not any ballots found together making such a bulk that they could not easily have been passed through the hole in the box through which the ballots were passed as the voting took place?—A. There were none.

Q. You stated that you found two ballots in the box which were folded together. Please state what name was on these two tickets for Congress.—A. The ballots to which I have referred were folded together closely three times, and they were Lowe ballots. There were other ballots that were folded so that they might have been voted together.

Q. Whose name for Congress was on the other ballots you refer to as being in a condition indicating that they might or might not have been voted together?—A. Wheeler's name was on them in two or three instances, and Wheeler's name was on the three ballots which I have named as being found together.

Q. Do I understand you to say that the only instance when the votes were folded together so closely as to make it appear that they were certainly voted together was the instance you mention of the two Lowe ballots?—A. It is because it was the only instance in which they could not have slipped together in the box. I refer to those that I took out myself. I took out probably more than half.

Q. If such statement has been made, that there were found in the box six or seven ballots rolled or twisted together, please state if said statement was true or false.—A. It is false.

W. M. High, 555, 556, 557, 558:

Q. What kind of a house was the election held in?—A. A blacksmith shop. It is a house constructed of planks set up endwise, running from roof to the ground, with good large cracks between the planks, with large folding doors that extended from the roof to the ground—no floor, no place for fire, only a forge, and was very disagreeable.

Q. Would it have been practicable or even possible for you to have counted out the ballots in that blacksmith shop that night?—A. No, sir; I think not, from the fact that the wind was blowing, and we could not have kept a lamp or a candle burning during the time.

Q. Was there any other shelter which you could have obtained for holding the election than the place where you did hold it?—A. None that I know of.

Q. When the polls closed, why did you not immediately count out the ballots?—A. Because we could not count them in the house in which we held the election, and could get no other place until after supper.

Q. What buildings are there in the vicinity of Lanier's voting place?—A. The blacksmith shop in which the election was held; John F. Lanier's store, about fifty yards from the shop; Mr. Lanier's residence, about two hundred and seventy-five yards from the shop. These were the only buildings, except some cabins and out-houses and gin-house. The nearest other buildings are nearly a mile off, except a church, which is within one-half mile of the place.

Q. What place did you succeed in getting in which to count out the ballots?—A. Mr. Lanier's parlor.

Q. How did you happen to go there?—A. By invitation. Mr. Lanier proposed if we would take supper with him that we could use his parlor afterward in which to count out the votes.

Q. Why did you not come back to the store to count out the ballots?—A. Because Mr. John F. Lanier said that we had had the use of his storehouse all day, and it was unreasonable to ask it that night; the registrar had used it.

Q. Was not Mr. Lanier's house the next nearest place where the votes could have been counted out?—A. It was.

Q. Where did you leave the ballot-box when you went to supper?—A. In the back or side lock-room of Mr. John F. Lanier's store.

Q. Who suggested your putting it there?—A. Mr. Hertzler, I think.

Q. Did you lock up the box in that room?—A. I locked the door of the room after I put the box into it.

Q. Who was with you when you locked the box in that room?—A. Mr. Hertzler.

Q. Did you go into the room to put the box into it?—A. I did not; I reached in and set the box upon a barrel beside the door.

Q. What did you then do?—A. I locked the door, and soon after myself, Mr. Hertzler, B. C. Lanier, sr., J. S. McDonald, and, I think, B. C. Lanier, jr., and perhaps some others, went up to Mr. Lanier's to supper.

Q. Who kept the key to the side room into which you put the ballot-box?—A. I did.

Q. What kind of a lock and door did the side room have; was it a substantially built door and a good lock, or what were they?—A. It is a strong lock and door.

Q. Was there any other way to get into that room except through that door?—A. There was another door through which freight was passed into the room, and which fastened on the inside with a bar, and could not be entered from without, except being first opened on the inside.

Q. Whom did you leave in the store when you went to the house?—A. Mr. John F. Lanier and several negroes.

Q. After supper, what did you do?—A. Mr. Hertzler, myself, Mr. B. C. Lanier, sr., and others came down into the store together. I unlocked the door of the side room and took out the ballot-box, and we went back to the parlor and counted out the votes.

Q. Did you find the ballot-box in precisely the same position as you left it?—A. I did.

Q. Do you think it possible that the ballot-box could have been tampered with while you was at supper?—A. No, sir; I do not.

Q. Do you know John F. Lanier?—A. I do, sir.

Q. What is his standing in this community?—A. It is good.

Q. From your knowledge of the character of John F. Lanier and his standing in this community, would you believe that he would be guilty of any dishonorable thing about elections?—A. I would not.

Q. State who went to Mr. Lanier's parlor with you.—A. Mr. Hertzler, William F. Baldwin, Frank Horton, B. C. Lanier, jr., J. S. McDonald, Walter Jordan, and Alex. Kelly. If there were any others, I don't remember them.

Q. State who first opened the box after the polls were closed.—A. Myself or Mr. Baldridge; I don't remember which.

Q. Where was the box when it was opened?—A. On a table in Mr. Lanier's parlor.

Q. Who were present when the vote was counted?—A. Wm. F. Baldridge, Frank Horton, John Hertzler, Walter Jordan, B. C. Lanier, jr., J. S. McDonald, Alex. Kelly, and myself.

Q. State how you found the ballots in the box, and state whether or not you found any ballots rolled or twisted together.—A. The box, as I remember, was nearly full. I remember through the day that I had to shake the box several times to get the ballots in. They would accumulate under the hole in the center of the box, and I had to shake them down, and there were no ballots found rolled or twisted together. There were several bunches of tickets found together, but there was no bunch with more than three tickets together.

Q. You speak of three tickets being together. Were they together in such a manner as to show that they were voted together, or were they together in such a manner as would indicate that they got together in shaking the box?—A. There were two bunches that I am satisfied were voted together—three in one and two in the other. There were others that might have been voted or may have gotten together in the box.

Q. Was there any other bunch of three tickets together as they came out of the box?—A. My recollection is that there were two other bunches of three tickets that were together, but not folded together.

Q. Did you at any time find six ballots together in the box, or did six ballots at any time come out of the box together?—A. There were not six ballots found together in the box at any time. Six ballots did not come out at any time together.

Q. Are you perfectly certain that in no case either six or seven ballots came out of the box together?—A. I am perfectly certain that in no case either six or seven ballots came out of the box together.

Q. Do you know whether or not there were windows in that room, or whether the door was barred on the inside?—A. There are no windows to the room, and I tried the door from the outside. I pushed against it and I could not open it.

J. F. Lanier, 559, 560, 561:

Q. Where was the ballot-box put while the inspectors were eating supper?—A. In the side room of the store.

Q. What persons brought the box to your store?—A. I don't know who brought it to the store. Captain High brought it in.

Q. What did he do with it?—A. He put it into the side room and locked the door.

Q. What did he then do?—A. He took the key and went out of the store.

Q. How many keys are there to your side-room door?—A. Only one.

Q. Is there any way to get into that side room except through the door that Mr. High locked?—A. There is another door to the room fastened on the inside by a bar.

Q. Was that door which was fastened on the inside fastened that night?—A. It was.

Q. Was it possible for any one to have entered your side room while the ballot-box was in there except by going through the door that Mr. High locked?—A. Only by breaking the front door.

Q. Did any one break down the front door?—A. They did not.

Q. You having testified that no one broke down the front door, please say now if by any possibility your side room could have been entered except through the door Mr. High locked while the ballot-box was in there without your detecting it?—A. No, they could not.

Q. How long did you stay in the store after Mr. High and the other gentlemen went to supper?—A. About half an hour.

Q. Did anybody go into the side room during that half hour?—A. They did not.

Q. Did you leave anybody in your store when you went to the house to supper?—A. I did not.

Q. What did you do with the key to your store when you went to supper?—A. I put it into my pocket.

Q. Did anybody go into your store while you was at supper?—A. They did not.

Q. When you returned to the store who was with you?—A. Captain High, Captain Hertzler, J. S. McDonald, B. C. Lanier, jr., B. C. Lanier, sr., and others.

Q. Who came in and got the box?—A. Captain High.

Q. Did you see him unlock the door of the side room?—A. I did.

Q. What is Alex. Kelly's politics?—A. He is a Republican.

Q. If any one has stated that while you was at supper on November 2, 1880, he saw two men go into your store by the door nearest to your father's house, was such statement true or false?—A. I am satisfied that no one went into my store while I was at supper.

Q. Did you send anybody to guard your store while you were at supper?—A. I did.

Q. State who it was, and what you told him to do.—A. It was Henry Kibble, and I told him to go down and stay about the store until I came; that I forgot to take my money out of the drawer that night.

Q. Did Henry Kibble go into the store?—A. He did not.

Q. Was Henry Kibble at the store when you came down?—A. He was.

Q. Did you refuse to permit the officers of election to count the ballots in your store? If so, why?—A. I did not make a positive refusal. I told them that I suspended business during the day to assist the register, and that they were making an unreasonable request of me.

Q. If you had suspended business during the day, from what source did the money which you left in the drawer, and that you sent Henry Kibble down to look after?—A. From sales on days previous to that.

Q. You stated that the door opening out of the side room, which is fastened by a bar inside, was fastened while the ballot-box was in there. Have you any special reasons for remembering that that door was fastened at that particular time, or do you state it because you habitually keep it fastened?—A. My reason is this: I had gone in there a short while before the box was put in that day and shut and fastened the door, and no one had gone in there from that time till the ballot-box was put in, nor until the next day.

H. Kibble, 569:

Question. State your name, age, occupation, and where you lived on November 2, 1880.—A. Henry Kibble; about fifty years; house and farm hand; I lived with B. C. Lanier, right here.

Q. Did you see J. F. Lanier about supper time on the night of the election?—A. I did.

Q. Did he tell you to do anything?—A. He told me just about supper time, in the yard, if I could get the chance to come to the store and set upon the fence until he could come from his supper, and to hail him when he did come, so that he might know that I had been here.

Q. What did you do?—A. I did come down to the fence near the corner of the store and staid there until John F. Lanier came there.

Q. How long after J. F. Lanier told you to go to the store did you go to the store?—A. I come right off.

Q. How far from the store was you when he told you to go to the store?—A. About two hundred yards.

Q. Did anybody go into the store while you was there?—A. No, sir.

Q. Are you certain about that?—A. Yes, sir.

Q. Did you hear any noise in the store or see any light in the store while you was there?—A. I did not.

One explanation of the large vote cast for the contestee at this precinct is that many colored Republicans having no Republican candidate for Congress preferred the contestee to the contestant. This is shown by the proofs.

J. Hertzler, a witness for contestant, 183, 188:

Q. I believe you stated yesterday that while the election was going on a crowd of colored men came up and voted, and that it was rumored or stated that the leader of these colored men had sold out, did you not?—A. I so understood the next day.

Q. You mean, do you not, by selling out, that this colored man had gone back upon the Republican party?—A. That is what I understood; that in that way this majority was brought about.

Q. Then, on the next day after the election, you understood that this majority was brought about by a colored man inducing an entire club to vote the Democratic ticket?—A. Yes, sir.

Q. Isn't it true, Mr. Hertzler, that you would think, from your knowledge of colored men, that they would disposed to secrete the fact of having voted the Democratic ticket if they had been censured for it?—A. Well, I expect they would, likely.

Q. It is true, too, of your knowledge of the colored men, that very many of them have a very imperfect idea of the sanctity of an oath?—A. Yes, sir.

P. McDaniel, a witness for contestant, 212:

Q. It is true, is it not, that any colored man who wanted to change his ticket could do so as he passed through the little room before he got to the polls?—A. After he entered the door, why, if he saw cause to change, and was mean enough, he could change right in the presence of the officers there; he didn't change in our presence, though, where we could see.

Q. You say, then, if he was mean enough to do it, he could change after he got in the room?—A. After he entered the door.

Q. And when they got in that room most of them staid some five minutes, did they not?—A. Yes, sir.

Q. It is true, is it not, that some colored men voted the Democratic ticket, and one or two admit it, and the other men who voted the Democratic ticket are apt to deny it?—A. Well, I don't know, sir, of any one that we gave tickets voted the Democratic ticket, and if they did it is not known to the general run of colored people. Any one that voted the Democratic ticket the officers know could not have voted after they entered the room without changing inside the door.

Q. Is it not true that there is a good deal of feeling expressed by the colored men down there about men who vote the Democratic ticket and then conceal it?—A. Yes, sir.

Q. Is it not true that women have actually threatened to leave their husbands because they were suspected of voting the Democratic ticket?—A. Yes, sir; I have heard of the like.

Q. Is it not true that in those clubs there has been a good deal of talk, and among the members of those clubs a good deal of talk about men of the colored race who were understood to have voted the Democratic ticket and concealed it?—A. Yes, sir.

Q. Don't you think some of them are sorry for it?—A. I don't know. A man that is mean enough to do anything of that kind I can't tell hardly when he is sorry.

W. Wallace, a witness for contestant, 222, 223:

Q. Were these men who said they would hold their tickets a foot and a half from their body who had been suspected of voting the Democratic ticket on the sly?—A. They were men who voted the Democratic ticket in August.

Q. And they had been censured by the other colored men for deserting their race in August, had not they?—A. What do you mean by censured? Yes, sir; they had been laughed at. I don't know that they had rated them in any way, though they had been laughed at.

Q. Then, to fully understand the matter, the men who held out the tickets a foot

and a half from the body were men who voted the Democratic ticket in August, and they did it—that is, they held out their tickets in November to show you that they voted the Republican ticket in November?—A. They done that to prove that they were true Republicans; that is, all men did.

Q. Did every man take his ticket in his left hand or right hand?—A. In his right hand.

Q. Did you examine his hand and sleeve, to see that there was no other ticket there?—A. Well, they would open their hand. I did not examine their sleeve, but their coat was so short I could see their wrist and see there was nothing else in their hand.

Q. You thought it important to examine their wrist and see that there was nothing up their sleeves?—A. Yes, sir; I did.

Q. And you examined each one in this way?—A. Yes, sir; I examined every one that voted the ticket.

Q. You examined each one of the 156 colored men?—A. Yes, sir; I did.

Q. You examined their hands and sleeves to see that there could be no foul play?—A. Well, I did not feel of their arms and sleeves, but I examined their wrists close before I gave them their ticket.

Q. You did all this because you had very little confidence in these men?—A. I had confidence in them, but I did it to be satisfied in my own mind that they did vote the Republican ticket.

Q. If the Democratic ticket they had had been rolled up very close they could have secreted it so you could not see it, could not he?—A. Every man held his hand open and showed me that he had no ticket before he asked for mine.

A. McCalley, 506:

Question. State your name, occupation, and if you are a colored man.—Answer. Alfred McCalley; forty-seven years of age; occupation, minister of the gospel and a farmer; colored man.

Q. State if you was a delegate to the Democratic convention held in Decatur last August which nominated a candidate to represent this district in Congress?—A. I was.

Q. What other colored men, if any, from this county, were delegates to that convention?—A. W. H. Councill and Anderson Critz.

Q. Were there many colored men who were earnestly advocating the Democratic cause in the November election?—A. There were.

Q. About how many voted the Democratic ticket at Lanier's store in the November election?—A. I can't state the exact number, but think there were a good many.

Q. Do you know of any acts of terrorism to prevent colored men from voting the Democratic ticket in the last November election or preceding thereto?—If so, state what they are.—A. I do. I know that colored men are generally ostracized if they vote the Democratic ticket. Essex Lewis was turned out of the Cumberland church because he voted the Democratic ticket, and I have been ostracized on that account. The elder of the church told me that neither Essex Lewis nor I should ever be received at his house again since we were going to vote the Democratic ticket. The pastor of the church invited me to assist him in administering sacrament at Poplar Hill. I went to do so. After I had read a passage of Scripture and prayed and got up to announce my text, a confusion ensued and many of the congregation departed, saying that they would not stay to hear a "Democratic nigger" preach. This was since the election.

Q. Please state if you went to Hartsell's to make a speech in September last in the interest of the Democratic party?—A. I did.

Q. Please state what occurred?—A. I was asked what party I was advocating. I said the Democratic party. Then they would not permit me to speak.

Q. Who was it that would not allow you to speak?—A. The colored people.

Q. Did you know who they were?—A. I did not. I only know that there was a large portion of them who would not permit me to speak.

Q. Did they use any threats against you if you tried to speak?—A. They did. They said if I got up to speak that they would mob me.

Q. What did you do?—A. I took the 4 o'clock train and returned to Huntsville.

Q. Why do you think that a great many colored men voted the Democratic ticket at Lanier's store in the November election?—A. There are a great many colored men who favor the Democratic party, and will always vote that ticket but for the ostracism and terrorism practiced by the Republicans or Greenbackers.

Another explanation of the result is that Lanier's precinct was carved out of Triana and Whitesburg precincts after the August election and before the November election of 1880, and the aggregate Democratic majority at the two precincts in August was 169, whereas at the November election the aggregate result was a Democratic minority of 222.

This shows not a Democratic gain, but a Democratic relative loss of 391 votes at the three precincts in November.

The vote in August stood as follows:

| | Democratic. | Opposition. |
|-----------------|-------------|-------------|
| Triana..... | 350 | 227 |
| Whitesburg..... | 267 | 221 |
| | 617 | 448 |

Democratic majority, 169.

But the vote in November was:

| | Democratic. | Opposition. |
|-----------------|-------------|-------------|
| Triana..... | 84 | 336 |
| Whitesburg..... | 175 | 223 |
| Lanier's | 133 | 55 |
| | 392 | 614 |

Democratic minority, 222.

This is shown on pages 533, 534, and 535 of the record.

It appears, therefore, that the aggregate opposition vote was 111 greater at the Triana and Whitesburg precincts in November than in August, while the aggregate Democratic vote in November, in all three precincts, was 225 less than at the two original precincts in August. And almost half of the aggregate Democratic votes cast in November in the three precincts were cast at the new precinct of Lanier.

A third explanation is, that three colored men, including Rev. Mr. McCally, were members of the convention which nominated Mr. Wheeler, and were influential workers for him.

Still another explanation is, that William Wallace, alias Wallace Toney, distributed Wheeler tickets. Wallace denies this. But Jordan swears to it on page 566. Wallace is impeached on pages 549, 556; and not one of the numerous witnesses, afterwards examined by the contestant, is called upon to sustain him.

IV.

MERIDIANVILLE, No. 2.

The following is the conclusion of the committee respecting the election at this precinct:

The returns being successfully impeached, contestant very properly relies upon the direct testimony of the voters themselves, which clearly entitles him to 55 votes at this box.

But the contestant did not specify, as one of the grounds of his contest, that he received 55 votes, or any other number of votes, at this precinct; nor did he advise the contestee in his notice of contest that he would attempt to prove such votes by witnesses. Nor did he demand the rejection of the precinct return. All he said was this:

I am informed and believe, and so charge the fact to be, that there was fraud and ballot-box stuffing or a false count at the precinct of Meridianville (box No. 2), in Madison County.

The grounds of this alternative charge, urged in argument, were (1) that the contestant received 18 votes less than the Garfield electors; (2) that all the inspectors were Democrats; (3) that 55 ballots were cast for the contestant, but only 47 counted for him; and (4) that one of the in-

spectors so inclined his person that the supervisor could not see the ballots when they were counted out at the close of the polls.

The circumstance that the contestant received 18 votes less than the Garfield electors would not seem to be a very serious element in the charge against the integrity of the returns. It is not surprising that he did not receive all the Republican votes at this precinct. In truth, it is rather amazing that he received any at all.

He had been a life-long Democrat, and while connected with the Democratic party had vilified the Republicans, and particularly the colored voters, with extraordinary virulence.

To the complaint that all the inspectors were Democrats, the answer is obvious. In the first place, the law on this subject is not mandatory. In the next place, a Republican was appointed, but did not appear; and in his absence the inspectors made an appointment to fill the vacancy. There was no law requiring them to select a Republican in that case. They did, however, attempt to do so. But book-learning seemed to be at a discount among the contestant's supporters, and the attempt was a failure.

The charge that 55 ballots were cast for the contestant and only 47 counted for him, rests upon 55 so-called depositions offered by the contestant.

These depositions are inadmissible for the following reasons:

(1) None of the depositions are certified as required by law.

(2) They constitute testimony in chief, and were taken, in the face of the contestee's objections, during the last ten days of the time limited by law.

(3) The notary refused to permit the contestee to cross-examine the witnesses.

To maintain the assertion that 55 votes were cast for the contestant, instead of 47, he depends largely on the testimony of a colored man named Wade Blankenship. The following extract from his deposition, printed on pages 234, 235, and 241, will show the character of the witness on whom the contestant relies for the impeachment and overthrow of the returns of these polls:

Q. Where did you hold that club meeting before the election?—A. On Jack Penny's place.

Q. How many were present?—A. I don't remember before the election; I don't remember how many was present, sir.

Q. About how many?—A. Well, at that meeting there was probably sixty-five or seventy men there.

Q. You know that to be true, do you?—A. Well, I don't know to be positive, but there was somewhere in the neighborhood of that.

Q. Can you swear positively that there were sixty men present?—A. I wouldn't swear at all about it; I was not acting as secretary of the meeting; I was there only as a speaker that night, and I paid no particular attention as to how many men were present.

Q. Did you know the men that were present personally?—A. Yes, sir; I knew every man in the house; I reckon there is none out there a stranger to me.

Q. Can you swear there were fifty men?—A. Yes, sir; I would do that, but I wouldn't want to swear that there were any designative number, simply from the fact that I don't know how many were there.

Q. If you don't know how many were there why did you swear there were sixty-five or seventy there?—A. I say I did not swear that.

Q. Then you don't understand that what you say here is swearing, do you?—A. I understand that, of course, but I didn't speak definitely as to how many were there.

Q. Can you swear that there were forty men there?—A. I could do it, but I don't want to swear as to any designated number, general, as I first stated to you.

Q. If you are certain there was forty there, why do you object to swearing there was forty there?—A. Well from the simple fact that I didn't count them; I just judged from the crowd sitting around that there was sixty-five or seventy men that were present.

to the original appointments. There is a further provision for a selection, by the inspectors themselves, to fill a vacancy at the polls. But there is no requirement, express or implied, that, in filling such a vacancy, the inspectors shall look to a representation of opposing political parties on the board.

Now, the provision for the original appointments of these inspectors is not mandatory, but is merely directory. There is no provision that the election shall be void upon failure to comply with the requirement. The fact that the observance of the requirement is made to depend on the practicability of making such appointments, of which practicability the appointing power must of course be the judge, negatives its mandatory character. But then, aside from that, there is in the nature of the provision nothing to justify the rejection of a return for the reason that the county judge failed to give the opposing political parties representation on the board of inspectors.

Mr. McCrary correctly states the general rule, in sections 126 and 200, as follows:

If, as in most cases, the statute simply provides that certain acts or things shall be done, within a particular time, or in a particular manner, and does not declare that their performance is essential to the validity of the election, then they will be regarded as mandatory if they do, and directory if they do not, affect the merits of the election.

Unless a fair construction of the statute shows that the legislature intended compliance with the provisions in relation to the manner to be essential to the validity of the proceedings, it is to be regarded as directory merely.

But then, whether the provision for the original appointment was, or was not, a mandatory requirement that the opposing political parties should be represented on the board, it is certain that the provision for filling vacancies at the polls embraces no requirement, direct or indirect, express or implied, that the vacancies shall be so filled as to secure representation to the opposing political parties on the board of inspectors.

So much for the law. Now for the fact. The fact is that Horton, the inspector against whom the complaint is aimed, had long been a Republican, and there is no proof showing, or tending to show, that he would not have voted for a Republican candidate for the office of Representative in Congress at this election if there had been such a candidate. The fact that he did not vote for the contestant affords not the slightest evidence that he was not a Republican.

It is true that the contestant's witness, Hertzler, says, on pages 178 and 180:

Q. Did Frank Horton try to get people to vote the Democratic ticket?—A. No, sir. Frank Horton, I thought, was a Republican, but from his actions I don't know he was anything; he just simply sat there and didn't say anything. I have only found out since that he was a Democrat.

Q. How did you find out he was a Democrat since the election?—A. I found out by my neighbors that Frank Horton was a Democrat.

Q. Was it not generally understood before the election that he was a Republican?—A. Before the election I didn't know him at all.

Q. You are pretty well satisfied that the charge against Frank Horton is untrue?—A. Yes, sir. The box was not tampered with while the election was going on.

Q. Have you any information that would lead you to believe that Judge Richardson, or the sheriff of this county, or the clerk, had any intimation that Frank Horton was not a sound Republican?—A. No, sir; I don't.

Q. Have you any reason to believe, except the charges that other negroes bring against Frank Horton, that he is not a Republican?—A. Well, I don't understand you; well, I have no reasons that he is not a Republican. He is a Democrat, is what they tell me. I know nothing but what they tell me.

But J. F. Lanier says, on page 561:

Q. Is it true that all the inspectors here are avowed Democrats?—A. I believe that Captain High and Mr. Baldridge are Democrats, but Frank Horton has acted with the Democrats in the last two elections, but always claims to be a Republican.

And, on page 563, B. C. Lanier says:

Q. What is your knowledge of Frank Horton's politics?—A. That he is a Republican, but has acted with the Democrats in the last two elections.

It is also suggested, as a ground for the impeachment of these returns, that there were eleven more ballots than voters.

Now, the fact is that the ballot-box did contain 11 more tickets than the poll-list contained names, and the inspectors deducted 9 from Wheeler's vote and 2 from Lowe's, because 9 Democratic tickets and 2 Republican tickets were folded. This is shown on page 197 of the record.

The law of Alabama does not authorize inspectors to destroy supernumerary ballots before counting out the votes cast for the several candidates. In this respect it differs from the laws of many other States. At the close of the polls the votes for the rejected candidates were therefore counted, and the statement of votes printed on pages 196 and 197 made out *first*. Afterwards the number of votes was compared with the number of voters, and the supernumerary ballots were deducted from the vote of Lowe and Wheeler respectively. The proof of this is to be found on page 177 of the record.

The law requires the inspectors to send up the lists of votes and voters, duly certified. They obeyed the law in this case. The lists are printed on pages 196 and 197 of the record. They show that the voters' names aggregated 188, and that the votes in the box aggregated 199; that the excess of votes over voters was 11; that the votes in the box numbered 57 for Lowe and 142 for Wheeler; that they deducted 2 of the supernumerary ballots from Lowe's vote, and 9 from Wheeler's, and that the vote, so counted, stood: for Lowe, 55, and Wheeler, 133. But the county canvassers overlooked the last paragraph of this statement, and counted for Lowe 56, and for Wheeler 142. These facts deprive the contestant of one vote and the contestee of nine. But they have no other effect on the case.

The deposition of William Wallace, *alias* Wallace Toney, is offered to prove that 128 votes were cast for the contestant, and also to impeach the returns. His deposition is inadmissible, for the reasons which exclude the others. But he is himself impeached by W. F. Baldridge, on page 549, and by W. E. Jordan, on page 566. Baldridge's character is shown to be reliable by the contestant's witness, Hertzler, on page 179. The contestant afterwards examined 126 witnesses, and made no attempt to vindicate the character of Wallace.

In support of his attack on these returns the contestant also charges that there was delay in the opening of the polls and in the appearance of the registrar. Hertzler's assertions on this point are overwhelmingly answered by the contestee's witnesses, Baldridge, High, J. F. Lanier, B. C. Lanier, and Jordan.

J. Hertzler testifies, page 174:

Q. Why were not the polls opened at that box sooner?—A. They were not opened on account of the registrar not being there, and there was a difficulty among the inspectors as to the appointing a registrar. Mr. Baldridge, one of the inspectors, said that he wouldn't open the polls unless the registrar was there, while the others claimed that they could appoint a registrar; we had the code there, which read that if the assistant registrar wasn't there the inspectors could appoint a registrar who may qualify for that day, and that word Mr. Baldridge, the principal inspector, claimed

the inspectors of the election certified lists for each precinct, and these certified lists constitute the registration lists evidencing who are entitled to vote. In making up this registration list, the elector is required to make oath that he has the qualifications of a voter as prescribed by the constitution of Alabama above stated. The assistant registrars are required to be present on the day of election for the purpose of registering such persons as may not have registered prior to the election. The list of those registered on the day of the election is returned with the poll-lists, &c., kept on the day of the election, to the county canvassers, and this list kept on the day of the election is filed with the judge of probate and becomes a part of the records of his office, and thus the registration lists are kept complete, and constantly show who are entitled to vote in the various precincts and wards of the county.

The contestee, as above stated, claims that a very large number of persons were permitted to vote in this district who had not been registered according to the provisions of this law, and the contestant endeavors to escape from this claim of the contestee, not by showing that the parties who voted were registered as the law requires, but by a construction of the constitution which we will here briefly state. The contestant claims that the provision of the constitution above quoted only means that a party shall not be permitted to vote when the act of the legislature in distinct terms provides that he shall not be permitted to vote unless he has been registered. Or, in other words, he claims that notwithstanding the fact that the constitution provides as already quoted, and notwithstanding the fact that a registration law has been enacted, still the party is entitled to vote unless the *statute* of Alabama expressly provides that he shall not be permitted to vote excepting when he is registered.

Now we respectfully submit that this is a perversion of the plain language of the constitutional provision. It will be observed that the language of the constitution is that "the general assembly may, when necessary, *provide by law* for registration, * * * and when it is *so provided* no person shall vote unless he shall have registered as required by law."

Now, what do these words, "so provided," refer to? Plainly to registration. That is to say, the general assembly was authorized to provide by law for registration; to determine the mode and requisites of registration generally and particularly. The registration had reference to persons who were entitled under the constitution to vote. It has nothing whatever to do with the qualifications of the voter, because those qualifications are fixed by the constitution itself, and could not be interfered with by any act of the legislature. And therefore the concluding words of this section are unmistakable in their meaning, "no person shall vote at any election unless he shall have registered as required by law"; and that meaning is that the constitution having fixed the qualifications of the voter, this registration law was intended to furnish the evidence of the right of the party to vote, to wit, his being registered as a voter according to the forms and requirements of this act of the legislature. This act of the legislature was provided for by the constitution, not to determine the qualifications of the voter, but to furnish the qualified voters with the evidence that they were qualified and entitled to cast their ballots; and the constitution simply provides, and no other rational meaning can be attributed to it, that registration, and that alone, shall be evidence of the fact that the party is a qualified voter, and therefore any person who is not registered is clearly an illegal voter under the constitution and laws of the State of Alabama. Registration

is the act of the voter. If he fails to register it is his own fault, and he cannot complain, nor can any one else, if his right to vote is lost by reason of non-registration.

After a careful examination of the testimony in this case, we believe that it conclusively shows that not less than 2,400 persons voted in this district who were not registered, and that not less than 1,000 of them voted for the contestant.

We cannot here set out all the testimony on this subject, but submit a table, giving the precincts, the number of non-registered voters, names of witnesses, and pages of the record, for convenience of reference:

TABLE No. 2.—*Unregistered and illegal voters who are proven to have voted for William M. Lowe for Congress, November 2, 1880. These illegal voters comprise a part of the 12,665 votes which were returned for Wm. L. Lowe.*

| County. | Precinct. | Pages of record containing registration lists | Pages on which poll-list contained | Number of voters not registered proven to have voted for Wm. M. Lowe. | Names of witnesses who prove the illegality of these voters, or that they voted for Wm. M. Lowe. |
|-----------------|---------------------------|---|------------------------------------|---|--|
| Jackson . . . | Berry's Store . . . | 713-716 | 694 | 23 | Robert F. Riddle and Robert F. Procter, pp. 790, 792. |
| | Nashville . . . | 720-724 | 686 | 14 | Frederick J. Robinson, p. 734. |
| | Carpenter's . . . | 700-703 | 690 | 3 | Daniel D. Harris, p. 783. |
| | Hunt's Store . . . | 717-720 | 695 | 7 | J. F. Skelton, p. 788. |
| | Hawk's Springs . . . | 708-710 | 692 | 4 | Samuel Rortex, p. 778. |
| | Bishop's . . . | 724-728 | 697 | 12 | D. V. Knobla, p. 781. |
| | Scottsboro' . . . | 728-739 | 698 | 11 | Robert S. Skelton & Wm. B. Bridges, pp. 773, 774. |
| | Bellefonte . . . | 704-708 | 601 | 17 | William P. Keith, p. 795. |
| | Davis's Springs . . . | 711-713 | 693 | 15 | Alexander Moody, p. 794. |
| | Meridianville No. 2 . . . | 626-642 | 667 | 16 | Each proven by the voter himself, 268. |
| Madison . . . | Meridianville No. 1 . . . | 626-642 | 665 | 89 | A. J. Bentley, p. 513, and J. M. Robinson, p. 544. |
| | Whiteburg . . . | 645-655 | 668 | 46 | G. D. Miller, pp. 509, 510. |
| | Madison . . . | 610-625 | 639 | 28 | Thomas B. Hopkins, pp. 511, 512. |
| | Madison X Roads . . . | 584-592 | 658 | 12 | N. P. Taylor, p. 570. |
| | Mayville . . . | 592-610 | 662 | 55 | Thomas J. Taylor, p. 514. |
| | Clutteville . . . | 571-584 | 656 | 23 | Wm. M. Douglass and G. W. Smith, pp. 540, 542. |
| | Courtland No. 2 . . . | 1142-1154 | 1139 | 189 | Quintus Jones and John W. Battle, pp. 1881, 1827. |
| Lawrence . . . | Brickville . . . | 1186 | 1182 | 18 | Oliver H. Reid, p. 1131. |
| | Red Bank . . . | 1184-1186 | 1183 | 12 | J. Milton Gray, p. 1182. |
| | Moulton . . . | 1173-1177 | 1177 | 16 | W. J. Seamans & C. A. Crow, p. 1161. |
| | Hampton's . . . | 1179-1182 | 1182 | 11 | Jordan White & D. C. White, p. 1156. |
| | Mooresville . . . | 836-831 | 803 | ■■■ | W. D. Barnett, p. 1169, W. T. McNutt and W. D. Johnston, p. 1166. |
| Lincoln . . . | Slough Boat . . . | 823-826 | 822 | 55 | John N. Martin, p. 815; Charles Hayward Jones, p. 848. |
| | Athens . . . | 831-835 | 842 | 16 | Robert Donnell, p. 819; Florentine Stewart, p. 823; Neil S. Marks, p. 817; Nathan B. Crenshaw, p. 849. |
| | Shoal Ford . . . | 835-836 | 836 | 9 | Nat. B. Crenshaw, p. 849; Peter J. Crenshaw, p. 858. |
| | South Florence . . . | 429-427 | 441 | 36 | Franklin J. Pepper, p. 856. |
| Limestone . . . | Florence . . . | 921-924 | 911 | 39 | James O. Murphy, John S. Jenkins, Sam. Hugley, James P. Murdock, Thomas Clem, W. P. Stradford, John W. Branson, from pp. 1049 to 1053. |
| | Oakland . . . | 924-929 | 918 | 25 | Gilbert Jackson, Wm. J. Kernahan, pp. 967, 969. |
| | Center Star . . . | 945-948 | 938 | 12 | H. C. Hyde, p. 900. |
| | Cave Springs . . . | 954-955 | 910 | 22 | B. Joiner, p. 962. |
| | | | | 1,027 | Carver C. Hipp and E. G. Hendrix, pp. 964, 966. |

It will be seen by reference to the testimony that in a very large proportion of the cases where persons voted who were not registered the testimony is direct and positive that these non-registered persons voted for the contestant; but if it be conceded that there is doubt as to who they voted for, then the rule of law as to dealing with such cases is as follows (see McCrary on Elections, page 298, section 223, first edition):

In purging the polls of illegal votes, the general rule is that, unless it be shown for which candidate they were cast, they are to be deducted from the whole vote of the election division, and not from the candidate having the largest number. (*Shepherd v. Gibbons*, 2 Brewst., 128; *McDaniel's case*, 3 Penn., L. F., 310; *Cushing's Election Cases*, 583.) Of course, in the application of this rule such illegal votes would be deducted proportionately from both candidates, according to the entire vote returned for each. Thus, we will suppose that John Doe and Richard Roe are competing candidates for an office, and that the official canvass shows:

| | Votes. |
|-----------------------|--------|
| For John Doe..... | 625 |
| For Richard Roe..... | 575 |
| | |
| Total vote | 1,200 |
| Majority for Doe..... | 50 |

But there is proof that 120 illegal votes were cast, and no proof as to the person for whom they were cast. The illegal vote is 10 per cent. of the returned vote, and hence each candidate loses 10 per cent. of the vote certified to him. By this rule John Doe will lose $62\frac{1}{2}$ votes, and Richard Roe $57\frac{1}{2}$ votes, and the result, as thus reached, is as follows:

| | Votes. |
|-----------------------------|------------------|
| Doe's certified votes | 625 |
| Deduct illegal votes..... | $62\frac{1}{2}$ |
| | |
| Total vote | $562\frac{1}{2}$ |
| | |
| Roe's certified vote..... | 575 |
| Deduct illegal votes..... | $57\frac{1}{2}$ |
| | |
| Total vote | $517\frac{1}{2}$ |
| Majority for Doe | 45 |

Applying this principle, we here submit a table showing the number of votes cast for contestant and contestee at various precincts, the number of non-registered voters, and the *pro rata* of deductions from each party on account of the non-registered voters, and the pages of the record where the registration and the poll-lists will be found, &c.:

TANDEM NICK: *lunatic* *shameless unregistered roter*.

| County | Precinct | Pages of record certifying list of registered voters | Pages of record certifying list of registered voters | Number of votes cast. | Votes. | Number of votes cast for registrars | Votes. |
|---------------------|---------------------------------|--|--|-----------------------|--------|-------------------------------------|--------|
| Jackson | No. 10, Bellfonta | 691 | 44 | 130 | 66 | 42 | 14 |
| | No. 13, Berry's store | 694 | 49 | 123 | 81 | 59 | 25 |
| | No. 15, Hunt's store | 695 | 24 | 33 | 20 | 15 | 11 |
| | No. 17, Nashville | 726 | 724 | 926 | 35 | 122 | 96 |
| | Cluttsville | 571-584 | 656 | 1066 | 222 | 61 | 35 |
| | Madison X Roads | 584-592 | 658 | 50 | 111 | 82 | 22 |
| | Madison | 610-625 | 659 | 160 | 224 | 116 | 72 |
| | No. 1, Madisonville | 626-642 | 625 | 121 | 360 | 106 | 44 |
| | Whiteburg | 645-655 | 683 | 175 | 232 | 113 | 64 |
| | Collier's | 671 | 645 | 84 | 134 | 48 | 29 |
| | Tranquill Slough Best | 1218-1225 | 1215 | 84 | 356 | 275 | 107 |
| | Mooresville | 826-831 | 803 | 90 | 619 | 215 | 100 |
| | Shoal Ford | 833-838 | 836 | 74 | 101 | 22 | 13 |
| Limestone | Oakland | 945-946 | 918 | 124 | 134 | 406 | 260 |
| | Florence | 921-924 | 911 | 252 | 173 | 103 | 77 |
| | Cherokee | 938-944 | 430 | 124 | 134 | 260 | 173 |
| | Pride | 426-436 | 443 | 44 | 65 | 50 | 31 |
| | 414-415 | 443 | 44 | 65 | 14 | 8 | 6 |
| | Leighton | 416-419 | 436 | 60 | 95 | 53 | 28 |
| | South Florence | 420-427 | 441 | 13 | 165 | 38 | 26 |
| | Courtland No. 1 | 1142-1154 | 1182 | 124 | 192 | 131 | 77 |
| | Courtland No. 2 | 1142-1154 | 1139 | 111 | 418 | 101 | 151 |
| | Mt. Hope | 1168-1171 | 1172 | 122 | 170 | 20 | 16 |
| | Landerille | 1173-1177 | 1191 | 62 | 82 | 32 | 18 |
| | Hampton's | 1176-1182 | 1182 | 24 | 43 | 21 | 11 |
| | Red Back | 1184-1186 | 1188 | 36 | 111 | 16 | 12 |
| | Avoca | 1194-1195 | 1182 | 31 | 61 | 20 | 13 |
| | Well Spring | 1194-1196 | 1187 | 35 | 113 | 42 | 34 |
| | Hillsboro | 1196-1198 | 1189 | 238 | 261 | 161 | 110 |
| | | | | 2, 608 | 1, 846 | 832 | 604 |

Now, making a calculation upon the basis of 2,400 non-registered voters, instead of 2,698, as shown by this table, and making the deductions pro rata, there would have to be deducted from the vote of the contestant 1,642, and from the vote of the contestee 758, and this of itself is more than sufficient to overcome all that is claimed by contestant. But we maintain the truth to be that in making this deduction on account of illegal ballots by reason of non-registration there should first be deducted 1,000 at least, because the proof shows that that number voted for the contestant, and that in making the application of the pro-rata rule it should be confined to the remaining 1,400 votes which the testimony does not show for whom the votes were cast, and, making the application to this number, there would be deducted from the contestant, first, 1,000 which were proven to have been cast for him, and, second, 905 under the pro rata rule, making a deduction of 1,905 votes from his aggregate and 495 from the aggregate of the contestee, and if we are correct in this, this alone is conclusive against the contestant in this case.

Another rule might be adopted which is more favorable to contestant, and which we have set out elaborately in our conclusion. It is urged by Mr. Ranney, of the majority, who has submitted his "views," that the contestee cannot have advantage of this for the reason, as he claims, that the evidence is not sufficient to show that these parties were not registered. To what special lists he applies his objections his "views" do not inform us. He speaks of them generally and makes his objections equally generally. One of his objections is that "we have nothing to show what names were once on them and been dropped off or taken off by reason of death, disability, removals, or for other reasons."

We fail to see the pertinency of this objection. If a man had once been registered and had been taken off the list by reason of his death, or by reason of his removal, or by reason of having been convicted of some crime which disqualified him as a voter, he certainly would not be entitled to be on the registration list. He would not be a voter, and in making up the list for the use of the inspectors it could hardly be contended that the judge of probate would put upon the list which was to be the guide of the inspectors the names of persons who had thus ceased to be registered. Another objection he makes is, that few of the lists are verified in the original by the certificate of the registrar. Another is that these papers that have been put in the record are not in the form prescribed, with appropriate headings, &c., and he objects to the poll-lists because some of them do not appear to have been certified by the inspectors, and for that reason claims that they have no verification or identification as genuine poll-lists, and cannot be regarded as proofs; and he says that in three precincts of Limestone County no poll-list appeared to have been returned at all, and the judges gave no certified copy of the same; but he adds that "the contestee has put in evidence three papers sworn to by one of the inspectors in each case as the poll-list, and purporting to be signed by the three inspectors. But as they never sent them to the probate office as required by law, and no reason or explanation for the omission given, we do not regard them as proof or as worthy of credit."

Now, the answer to all this seems to us to be plain. First, as to those lists which he criticises on account of informality, which have been certified by the probate judge, the law requires, as we have seen, first, that the judge of probate shall furnish to the precinct inspectors the registration lists which are to be their guide in conducting the election. Next it requires that

the precinct registrar shall be present on the day of the election and register such persons as have not theretofore been registered; next it requires this additional registration list to be sent up with the returns, in the same box in which the returns are sent; next, it requires that this additional registration list shall be filed with the probate judge, and thus we have in the office of the probate judge the very identical registration list which was used and made at that election. The probate judge is by law the custodian of this list, and whether that list was formal or informal in its construction, and whether the proper certificate was put upon it or not, can make no possible difference, so far as the point in controversy is concerned, because it is *the* list upon which the election was conducted. There was no other list, and the fact that the list may have been irregularly made up by the officers whose duty it was to make it could not possibly render legal a vote that was cast by a party who was not registered even upon this informal registration list. There is no other way to prove what that list was than by the certificate of the judge of probate, except as we will hereinafter state. He was the custodian of the list, and his certified copy of that which appeared in his office as the list is all that the law requires.

To the objection that he has made, that some of the poll-lists, to wit, in three precincts in Limestone County, have not been properly proven, because they were presented in evidence by the inspector instead of the judge of probate, we think there is a conclusive answer in this: That the law of Alabama requires one poll-list to be certified by the precinct managers and sent up with the returns, and another copy of the poll-list to be kept by the inspector. Now, here are two records kept, one in the probate judge's office, and the other by one of the inspectors. And to either of these the contestee had the right to go for the purpose of procuring these poll-lists, and either one of them is perfectly competent as testimony. In respect of the three precincts referred to, the contestee has seen fit to put in evidence the poll-list which the law requires to be kept by the inspector, and we entirely fail to see why that poll-list is not entirely competent as evidence, just as competent as would be the poll-list that was filed in the office of the judge of probate. But the testimony of these inspectors and the integrity of these poll-lists is attempted to be called in question, because it is said that from these precincts no poll-list found its way into the office of the judge of probate. But the fact that these poll-lists did not find lodgment in the office of the judge of probate, when it is proven by the testimony of the inspector who produces the poll-list required by law to be kept by him that that was the poll-list used at that election, then we submit that the fact that there is no list in the office of the judge of probate for such precinct is not upon any principle known to the law sufficient to defeat the direct evidence above referred to. As to these registration lists therefore the case stands thus: The contestee has furnished certified registration lists as they appear in the office of the judge of probate and poll-lists as to the precincts, except three in Limestone County, and as to these three he has taken the testimony of the inspectors in whose custody the poll-lists were, and, in connection with their testimony, has produced the lists used in those precincts.

The objection taken to the poll-lists furnished by the judge of probate because the certificate of the inspectors of the election does not appear thereon is untenable, we submit, for another reason. By an examination of the statute it will be seen that the inspectors are required to keep a "poll-list." Then they are required to make a certificate on that "poll-list," and the "poll-list," as we have above stated, is to be filed in

the office of the judge of probate. Now, the certificate of the precinct managers that is to be indorsed on the "poll-list" is no part of the poll-list itself. It is an identification or verification of the poll-list, and therefore the judge of probate certifies the "poll-list," it is no part of his duty to certify the verification of the poll-list, and the absence of this verification is therefore no evidence that the poll-list was not duly verified by the certificate of the precinct managers.

But to all of these objections that are made to the sufficiency of this testimony we have another answer to make. The contestant was duly notified of these illegal votes, and that their rejection would be contended for in this contest. The contestee, in support of that, put in evidence these poll-lists and registration-lists, for the purpose of showing that persons whose names appeared on the poll-lists did not appear on the registration lists, thus proving the illegality of these ballots. The contestant had ample opportunity afforded him to show that these parties were registered, if such had been the fact. Specific information was given him by means of these lists and by direct proof specifying names as to the persons claimed to be illegal voters, and in not a single instance has he proven or attempted to prove that these parties were registered as the law requires. If inferences are to be indulged in, in a case like this, as they are indulged in by the majority in reaching their conclusions, then the inference from these facts which we have just stated is irresistible, that what the contestee has asserted as to these voters is true. If it were not so, if these parties or any of them were registered, the contestant would undoubtedly have availed himself of the opportunity to make the proof by producing the necessary evidence, which must have been within his easy grasp, if the fact had been otherwise than as claimed by the contestee.

As above stated, conceding to the contestant all that he claims in regard to the matter of rejected ballots, the rejection of these non-registered voters, which we maintain is clearly commanded by the proofs in this case, must determine the case in favor of the contestee.

Mr. Ranney, in his report of the majority, asserts that the registration lists which are placed in evidence are not legal registration lists, that is, they are not such registration lists as are required by law; and his report gives as a reason why this cannot be availed of by Mr. Wheeler, that "contestee does not set up a want of legal registration as vitiating the election in any precinct."

Upon this point the majority are mistaken. The allegations of contestee upon this point are as follows:

Contestee alleges that at the following precincts of Lawrence County, viz, Courtland, Red-bank, Avoca, Wolf Spring, Mount Hope, Kinlock, Landersville, Hampton's, Oakville, and Hillsboro', 450 persons were allowed to vote, and did vote, for contestant, some of whom had no right to vote at the precincts where they cast their votes, and others who voted at said precincts were not legal voters, and had no right to vote at all.

And contestee further alleges that these persons "*did not have a right to vote, for the reason that they had never been registered as required by law.*"

The proof shows that there was no legal registration at any of these precincts, and therefore all these should be rejected from the count, because where there is no legal registration there cannot be legal voting.

This is unquestioned law, and was lately reaffirmed by the committee in the case of *Finley vs. Bisbee*.

In the Florida case the proof shows that the registration lists, so far as they went, were legal.

In this case the proof shows that there was no legal registration at all in the precincts of Lawrence County which we have mentioned, and it further shows that no part of the pretended registration of said precincts is legal registration.

The allegations of contestee that registration lists are not legal are more direct and positive than the allegation of contestant that ballots were rejected, and more direct and positive than the allegation of contestant regarding Lanier and Meridianville precincts.

COURTLAND BOX NO. 2.

In addition to the foregoing, however, we think it plain that under the law and the repeated decisions of the majority of this committee Courtland box No. 2 must be rejected from the count. This precinct was returned, for contestant 419, and for contestee 111. The law of Alabama requires that upon the closing of the polls the inspectors shall proceed immediately to count the ballots. Now, in the case of this precinct, upon the closing of the polls the inspectors proceeded with the count, and continued until about two o'clock the following morning. Then the suggestion was made by some one that a mistake had been made, and thereupon the ballots were all replaced in the box, and a Mr. Harris, one of the inspectors, who is described by one witness as an Independent voter, and whose politics are of doubtful complexion, at least, took that box, with the ballots in it, carried it away with him, and kept it until the next morning. There is absolutely no testimony proving or tending to prove that the ballots in that box remained the same during this interval.

THE CODE OF ALABAMA.

Section 285 says:

It is the duty of all inspectors of elections in the election precincts, immediately on the closing of the polls, to count out the votes so polled.

The positive proof shows that at Courtland box No. 2 all the inspectors were Greenbackers or Independents, and the record shows that Mr. Lowe, in announcing himself as a candidate, called upon Greenbackers, Democrats, and Independents, and upon these alone, for support.

There is no positive proof that Mr. Harris was a Democrat, although Mr. Lowe's lawyers make a great effort to establish that fact, but it is positively proved that he had been an independent voter, and had on four occasions arrayed himself against the Democratic party.

It shows that Joseph Wheeler received as many votes as Mr. Lowe, but that the inspectors violated the law, and that Wheeler ballots were abstracted therefrom and Lowe ballots substituted therefor.

The uncontroverted proof shows that there were but little over 500 ballots cast at that box, and that the inspectors pretended to be occupied counting these ballots from 5 o'clock in the evening until 2 o'clock the next morning.

That even after these nine hours' work the inspectors had not completed the count of the votes.

That they then put the ballots in a rough box, and that one of the inspectors took the ballots away from the voting place, kept them all

night, and the next day the ballots were illegally counted and a return made, falsely stating that Wheeler had received 111 votes, and that Lowe had received 419 votes.

And the evidence further shows that in truth and in fact Wheeler received at least 200 votes at that box, and the proof tends to show that he received at least 250 votes.

We give below some of the evidence regarding this box.

Mr. Reynolds, a witness examined for William M. Lowe, testified as follows, page 443: "Was United States supervisor of Courtland box No. 2, at election November 2, 1880." And on page 444 gave the following evidence:

Q. Was the vote counted out according to law at your box?—A. I suppose it was.

Q. Did you see the vote counted out?—A. I saw it; I was in there nearly all the time, and watched that.

Q. State how it was counted.—A. It was counted out like the votes are generally counted.

Q. Is it not true that when the votes were pretty nearly counted out that the inspectors stopped counting the votes, poured all the tickets back, in a rude box, and then dispersed, and did not return until the next day?—A. Well, they did not get through counting out until the next day.

Q. Cannot you answer the question, Mr. Reynolds?—A. I know they did not get through counting, and we had to go back next morning to finish counting.

Q. Where were the ballots left during the night?—A. Well, I think Mr. Harris taken them down to the hotel with him. He was one of the officers.

Q. In what did he take them?—A. He took them in the box—the box that they were put in.

Q. What kind of a box?—A. A ballot-box.

Q. Was not it a common candle-box?—A. Well, I didn't examine particularly about that; it was just a ballot-box, such as we generally had.

Q. Did it have any lock to it?—A. Well, I don't know; I did not examine it sufficiently to tell about that, whether it had a lock on it or not; but it ought to have had if it did not.

Q. When they returned the next morning did they not pour all the votes out on the table?—A. Well, they selected them out and put them at different places in different piles by themselves so they could get along and count them faster.

Q. Were not all the ballots lying on the table at the same time?—A. All of them?

Q. Yes, sir.—A. I don't think they were all out at one time.

Q. Were not most of the ballots lying on the table at the same time?—A. I think the majority of them were.

Q. How many ballots were there?—A. In all?

Q. Yes, sir.—A. I will have to make a calculation here. How many were there cast?

Q. Yes, sir; at that box.—A. Well, here it is, you can make the calculation.

Q. Well, to give it roughly?—A. Mr. Lowe got four hundred and forty-one (441); twenty-two (~~22~~) off left four hundred and nineteen (419). Twenty-two Greenback votes. Wheeler one hundred and eleven. My recollection is that was the majority of the votes out on the table.

Q. Is it not true that when the majority of the votes were lying on the table, that they were sorted out in piles?—A. Well, they sorted them so they could get along in counting. They sorted them out; that is, the Democratic votes were sorted out, and the others by themselves.

Q. Is it not true that they had pretty nearly counted out the vote the night before, before they stopped?—A. No, sir; they lacked right smart of it.

Q. How many hundred had they counted out, do you think?—A. Well, I don't know; did not take any notice of that.

Q. Did they commence in the morning where they left off, or did they commence at the beginning?—A. They counted the whole thing over, my recollection is about it.

Q. Were not people who were not election officers permitted to come into the room in the morning?—A. Well, I was not there at the time, but I was there nearly all the time. There might one or two have come in.

Q. Were not people permitted to come into the room during the night, after you left there?—A. After we left there?

Q. Yes, sir.—A. I don't know. I was not there; I left when the box left.

Q. Could not the room be easily entered?—A. Well, I suppose it could; that room? Yes, sir. Don't think it had any lock to it. I suppose any one could get in there that wanted to. But then that was after we left, you know. I don't know whether any one went in or not. The votes were taken down to the hotel.

Q. Was it not generally understood at that box that Joseph Wheeler was getting a large vote that day during the election?—A. Well, I was not out much amongst the people; I was watching over the box, and did not go out but very little.

Q. Did not the election officers report that that was so?—A. The general opinion was that he was getting over the Democratic vote there.

Q. Finally, on November the third (3d), when the vote was counted out, was it not shown that Joseph Wheeler had but one hundred and eleven (111) votes?

(Contestant objects to this question, because he has answered it three times.)

A. Yes, sir.

Walter W. Simmons, a supporter of and a witness summoned by William M. Lowe, testifies on January 4, 1881, p. 452:

Q. Did you have anything to do with holding of the Congressional election on November last?—A. Yes, sir; I was supervisor at box number 2, Courtland precinct.

Q. You made out that report two days after the election, did you not?—A. I made it out the next morning after the polls were closed and put it in the office.

Q. Did you not state, Mr. Simmons, two or three times during the day, that Joseph Wheeler was getting a large vote at your box?—A. Yes, sir; I thought you were getting a larger vote than you really did get.

Q. You state that the objection made to the ticket was that it had numerals?—A. Yes, sir.

Q. Were not those numerals something besides the names of the persons to be voted for and the offices to which they were to be chosen?

(Contestant objects to this question, because it calls for the opinion of the witness.)

A. I suppose it is something besides the names of the electors.

Q. Is it not true, Mr. Simmons, that the inspectors commenced counting the vote, and that they then poured all the votes back in the box and dispersed for the night?—A. Well, they counted until about 2 o'clock in the morning, I believe, and some of them discovered that they had made a mistake, and they just concluded they would bundle up, and commence and recount the whole box the next morning; Mr. Harris took the box, and went to the hotel that night and locked it up in the room with him, and met the next morning and finished counting.

Q. Didn't some of the inspectors or clerks get sick?—A. One of the clerks got sick—Mr. Branch.

Q. When they met the next morning, were you present to see them count?—A. Yes, sir.

Q. Is it not true that they poured all the ballots on the table, and sorted them out?—A. I think they did; some one suggested that they could get through quicker by counting them that way; they poured them on the table, and sorted the tickets, to get the Republican tickets to themselves, and the Greenback tickets to themselves, and the Hancock Democratic tickets to themselves.

Q. Is it not true that this room where you held the election was an open room that people could enter at pleasure?—A. Well, I suppose they could if they had tried; it was a pretty shabby old concern; doors were kept closed, I believe, all the time until they closed up.

Q. You have been actively engaged in politics, have you not, in this last canvass?—A. Yes, sir; I have taken a great interest in politics this last year.

Q. You were a strong supporter of Colonel Lowe, were you not?—A. Yes, sir.

Q. Mr. Simmons, did or not the friends of General Wheeler make the same kind of efforts, so far as you know, to secure the colored vote that friends of Colonel Lowe did?—A. I suppose they did.

Q. No man's vote was refused because he was a colored man?—A. Not that I know of.

Q. You stated, I believe, Mr. Simmons, that the inspectors counted the vote until 2 o'clock at night?—A. I think it was about 2.

Q. And then adjourned until the next morning; then they had another count?—A. Yes, sir.

Q. Were the votes that you say that were thrown out the same the night before that they were the next morning?—A. Yes, sir.

Q. The box you stated was taken away by a Mr. Harris and left in his custody between the count at night and the count the next morning?—A. Yes, sir.

Q. What were Mr. Harris's politics?—A. Well, sir, he is a Democrat, I believe; always has been.

Q. Was he a friend and supporter of General Wheeler?—A. Yes, sir; I believe he was.

Q. By General WHEELER. Don't you know he voted for Billy McDonald and for Houston?—A. My opinion is that he voted for McDonald, but I don't know. My opinion is he voted for Houston for tax collector, too.

Q. Both of those men were opponents to the Democratic party, were they not?—A. Yes, sir.

Q. Is not it your opinion that Mr. Harris voted for Mr. Houston three years ago, also?—A. Yes, sir; it is.

W. W. SIMMONS.

J. J. BEEMER, page 1128, testifies as follows:

Q. Please state your name, age, where you live, and how long you have resided there.—A. J. J. Beemer is my name; I am in my forty-first year; I live at Courtland; all my life, except six years in Huntsville, when I was a boy, and the time I was absent in the war.

Q. Please state who were appointed inspectors of the election held at box No. 2 in Courtland on November 2, 1880, for member of Congress and Presidential electors, and state their politics.—A. James Montgomery, an avowed Greenbacker; J. J. Beemer, an independent voter; and John H. Harris, also an independent voter.

Q. Please state if you are well acquainted with the voters of Courtland precinct, and their political sentiments.—A. I think I am well acquainted with the voters of the Courtland precinct and their political sentiments.

Q. For whom was James Montgomery and M. M. Butcher for Congress?—A. I know that James Montgomery was for Lowe, and my belief is that Butcher was also for Lowe.

* * * * *

Q. Is it true or not that when you first counted out the ballots after the polls were closed a mistake was made in the count, and that you then adjourned over until next day, and that Mr. Harris took charge of the box until you met next morning?—A. It is true.

In answer to another question, Mr. Beemer testified, page 1129:

General Wheeler got between seventy-five and one hundred white votes at that box, and the colored men who voted for him were known to be for him.

T. H. Jones, page 1087, testified:

The politics of the inspectors at Courtland box No. 2 was as follows: One a Greenbacker, and the other two had been accustomed to vote split tickets.

The evidence shows that there were no ropes put up, as required by law, and that the persons who were distributing Garfield and Wheeler tickets were, in most cases, close to the window, and saw the men hand in their votes, and the proof is positive and uncontradicted that Garfield and Wheeler ballots were voted which were not counted.

Green Jones, pages 1065 and 1066, testifies that he was at Courtland box No. 2 all day November 2, 1880, working in the interest of Joseph Wheeler for Congress, and that he got twenty-five colored men to vote for General Wheeler on the Garfield and Arthur ticket. He testifies that he issued these twenty-five tickets, and saw them put the tickets in the hands of the inspectors; that a great many colored men voted that kind of ticket at that box that day; that there were a number of persons, both white and colored, working with the colored people to get them to vote the Garfield and Wheeler ticket that day.

T. N. Kirk swore that the colored men thought they had as good a right to vote for Wheeler as for Lowe, as long as both were on the Garfield ticket. (See pages 1067 and 1068.)

Kirk also swore that he voted for Wheeler, and got ten other colored men to vote for him also at Courtlandt box No. 2.

Joe Owens, page 1069, testifies as follows:

I gave out seventeen tickets with the name of Joseph Wheeler on them, who promised to vote the ticket, and, I think, they all voted those tickets; but I know seven of them voted the Wheeler ticket for Congress, at Courtland box No. 2, because I saw them vote the tickets which I gave them.

He testifies that all these men were colored men.

Robert Beard, page 1072, testified that he got three colored men to vote for Wheeler at boxes 1 and 2 at Courtland, and that he voted for Wheeler himself; that a great number of colored men voted the Wheeler ticket; and that a number of persons, both white and colored, were

working to get them to vote for the Garfield and Wheeler ticket; and that the impression was that most of the colored men were voting that ticket.

Henry Clay Jones, page 1074, testifies that he got thirty-six colored men to vote the Garfield and Wheeler ticket at Courtland box No. 2, Nov. 2, 1880, also that a great number of colored men voted that ticket that day; that this was a general impression, and that he knew it to be true because he saw them vote it.

James Brown, page 1077, testifies that he voted a Garfield and Wheeler ticket, and got another colored man to vote the same kind of ticket, and that he was a colored man.

Quintas Jones, page 1080, testified that he got seven colored men to vote the Garfield and Wheeler ticket.

Isaac Jones, page 1088, testified that he got ten colored men, including himself, to vote the Garfield and Wheeler ticket at Courtland box No. 2, on November 2, 1880.

Shadrach Kirk, page 1090, testified that he got four colored men, including himself, to vote the Garfield and Wheeler ticket on November 2, 1880, and that most of the colored men were voting that ticket that day.

Patrick Jones, page 1092, testified that he was certain he got seven colored men, including himself, to vote the Garfield and Wheeler ticket at Courtland on November 2, 1880.

Frank Clay, page 1095, testified that he got nine colored men, including himself, to vote the Garfield and Wheeler ticket at Courtland box No. 2.

Malachi Swope, a colored man, page 1098, testified that he voted the Garfield and Wheeler ticket.

Ben Jones, page 1108, testified that he got thirteen colored men to vote the Garfield and Wheeler ticket at Courtland box No. 2, on November 2, 1880.

Corodell Swoope, colored, page 1111, testified that he voted the Garfield and Wheeler ticket at Courtland on November 2, 1880.

The evidence of T. H. Jones, pages 1086 and 1087 of the record, is as follows:

Question. Where were you on election day, November 2, 1880?—Answer. At the Courtland box.

Q. In whose interest did you work that day?—A. I was working with the colored men to induce them to vote for Joseph Wheeler.

Q. Please state how many tickets you gave out to colored men who promised to vote for Joseph Wheeler.—A. I did not count them; I suppose fifty or sixty.

Q. Are you satisfied that these fifty or sixty tickets were voted by colored men?—A. I am satisfied these tickets were voted as well as a man could be satisfied with anything which happens in ordinary affairs of life. I was near the polls and gave out the tickets to colored men who promised to vote them, and saw many of them vote them at the polls; there were no ropes stretched, so we were enabled to go up close to the window where they put in the votes; those that I had doubts about I noticed that they voted the ticket I gave them; those that I had perfect confidence would vote the ticket I gave them I did not take pains to observe.

Q. Have you a ticket similar to those you gave the colored men to vote? If so, please mark your initials upon it and make it an exhibit to your deposition.—A. I have done so.

*For Electors for President
and Vice-President of
the United States:*

GEORGE TURNER.

WILLARD WARNER.

LUTHER R. MARTIN.

CHARLES W. BUCKLEY.

JOHN J. MARTIN.

BENJAMIN S. TURNER.

DANIEL B. BOOTH.

WINFIELD S. BIRD.

NICHOLAS S. M'AFEE.

JAMES S. CLARKE.

*For Representative in
Congress from the Eighth
Congressional District:*

JOSEPH WHEELER.

Q. What were these tickets understood to be by the colored men?—A. They were understood to be tickets with Garfield and Arthur electors, with the name of Joseph Wheeler on it for Congress; they all understood that in voting the ticket they were voting for Garfield and Arthur for President and Vice-President, and for Wheeler for Congress.

Q. Was it or not at box No. 2 that these tickets were voted?—A. The great bulk of them voted at box No. 2, but some few of them voted at box No. 1. I voted at box No. 1 late in the evening, when the voting was pretty much all over. I voted a Hancock ticket, with Wheeler on it for Congress.

Q. State the names of all the inspectors at box No. 2.—A. James Montgomery, John H. Harris, and J. J. Beemer.

Q. State the politics.—A. Montgomery is a Greenbacker, and the others have been accustomed to vote split tickets.

Q. State the names of the inspectors at box No. 1 and their politics.—A. When they commenced the inspectors were Samuel Ashton, a Republican; A. J. Morris, a Republican; and James Galey, a Greenbacker; but they changed and put in T. A. Tatham, a Democrat, in place of A. J. Morris, Republican, who, however, remained and acted as clerk.

Q. Was there a Republican supervisor at box No. 1?—A. Yes.

Q. Was there a Democratic supervisor at box No. 1?—A. No.

Q. Please state what the general impression was when it was announced on November 3, the day after the election, that Joseph Wheeler had but one hundred and eleven votes counted for him at box No. 2.—A. It was a matter of great surprise, as from the way the votes went in it was thought Wheeler votes would be two or three times as large as was counted for him.

Q. Please state the politics of the party opposed to the Democratic party for the last nine years.—A. In 1871 and 1872 the candidates for the legislature and county officers called themselves Independents, and it was the same up to about 1877; then they assumed the name of Greenbackers. There have been no candidates for county officers for many years on square Republican principles, except Peter Walker and John Bell, who ran for the legislature in 1878. At each President's election the Republican electors have been voted for in this county.

Q. Please state what influences you understand have been and are brought to bear upon the colored people to induce them to vote for the Greenback and Independent candidates.—A. The influence of fear and intimidation, to a very great extent, is brought to bear; they are taught that if they do not vote for these Greenback and

Independent candidates, pursuant to the direction of their leaders, that the least punishment which would be inflicted upon them would be ostracization, and that they would be denounced by their colored associates as traitors to their race; they also have fear of bodily harm and harm to their property unless they vote the ticket dictated by their leaders. In 1878 Peter Walker and John Bell tried to run for the legislature on the Republican ticket, and Peter Walker particularly was so threatened and intimidated and abused that he was afraid to openly distribute his tickets. I was informed that he was so terror-stricken and alarmed that he was in great fear that his house would be burned and that he would be killed. Samuel Haynes, a very intelligent colored man, has just told me that the prevailing influence brought to bear upon the colored man to make him vote for the Greenback party, or some party opposed to the Democratic party, was the conviction and constant threats that they would be ostracized by their race unless they did so. He also said that no matter how beloved and popular a candidate might be, all his prospects would be blasted if he was in support of the Democratic party.

Q. Do colored men when they vote the Democratic ticket want it kept a secret?—
A. Yes.

THOS. H. JONES.

Witness:

Jos. F. HILL.

This conclusively shows that there was fraud at this box. It shows that Joseph Wheeler got at least 100 to 150 Garfield and Arthur votes. The proof also shows that Wheeler received at least 75 to 100 white Democratic votes at that box.

There can be no question but that this box must be rejected.

The proof comes from the witnesses and friends of Colonel Lowe.

As some point was made regarding the politics of Mr. Harris, who constituted himself the custodian of this box, we have taken some trouble to review the subject, and we present the following summary of the evidence which bears on this subject.

Before proceeding to discuss this evidence we must remark that the proof shows that this evidence was all written down by a stenographer (who was employed by Mr. Lowe), and was afterwards written out in long-hand when there was no notary public present.

Therefore, in justification to Mr. Reynolds and Mr. Harris, we may conclude that it was not written down as it was given.

In discussing the evidence we simply discuss what Mr. Lowe's lawyers and stenographer have placed in the record.

Mr. Lowe's witness Mr. Reynolds, who the record shows to be very earnest for Lowe, who swore he lived in Courtland, which is 43 miles from Huntsville, and who went there voluntarily, passing through parts of four counties, viz, Lawrence, Morgan, Limestone, and Madison, to testify as a witness for Mr. Lowe, when the law did not require him to leave his own county to give evidence; who puts in his evidence, page 446, the disgraceful Stevenson circular; who, when he saw how important it was to Lowe to prove the integrity of the box, testified, page 444¹, in answer to Wheeler's first question, that the vote at that box was counted out according to law, and to the second question that he saw the count, and to the third question that it was counted as votes are generally counted.

Mr. Reynolds's own evidence shows that he knew that this statement was not correct. It shows that he knew that the vote was counted the next day in violation of law, and that the manner of counting was in violation of law.

He knew there were what were called straight Republican tickets, straight Democratic tickets, and Garfield and Wheeler tickets.

He knew that to sort them out, and count as he finally admits they did, would be an injury to Wheeler.

He evades the fourth and fifth questions, and it was not till the sixth question came that he admitted the box was carried off by Mr. Harris.

Then follows a series of answers which appeared to be efforts to prevent the development of the fact that the box was without a lock.

At bottom of page 445 he says he thought Mr. Harris was a Democrat, but the committee must remember that many witnesses who supported Colonel Lowe testify that they thought both they and Colonel Lowe were Democrats.

Richard H. Lowe swears, page 160, that he was a Democrat, and a supporter and admirer of Colonel Lowe, and anxious to see him elected; and further he says of Colonel Lowe, page 166, "I think he is a Jeffersonian Democrat," and on page 164 $\frac{3}{4}$ he says Colonel Lowe claimed to be a Democrat of the old style—a Jeffersonian-Jacksonian Democrat.

R. H. Lowe also swears, page 173 $\frac{1}{2}$:

I have heard Colonel Lowe declare that any one who said that he was a Republican was a liar.

Q. You have heard him frequently declare that, have you not?—A. I have heard him declare that; how frequently I cannot remember.

And on pages 166 to 172 of his deposition appear the manifestoes of Colonel Lowe, which certainly show extreme opposition to the principles advocated by the Republican party.

R. H. Lowe also exhibits Colonel Lowe's manifesto of September 20, 1880, in which he appeals for support to Greenbackers, Democrats, and Independents, and does not even ask Republicans to vote for him.

William C. Summers, a supporter of Lowe, a witness for Lowe, and an inspector of election, testifies, page 1353 $\frac{3}{4}$, that he is a Jackson Democrat, and Colonel Lowe claimed to be a Democrat, and that he had read some speeches of Colonel Lowe in which he claimed to be a Democrat, and heard his supporters talk so; and on page 1349 $\frac{1}{2}$ O. H. P. Williams, a witness for Colonel Lowe, testified twice that Lowe in his speech abused the Republican party.

Mr. Milton also swears, page 320, he was a Democrat, and yet he was a worker for and voted for Colonel Lowe. He also swears that Deputy Marshal Stockton was a Democrat, but he also voted for Lowe, and he and two other Lowe men were appointed as United States marshals to control the election at Hunt's Store.

Even Hertzler tried to pass himself off as a supporter of Wheeler, in the hope it would help out his false testimony about Lanier's, and help to throw out that box.

He swears, page 184 $\frac{1}{2}$, in answer to the inquiry if he did not vote for Lowe: "*No; I always vote the Democratic ticket.*" He afterwards was compelled to admit that he voted for Lowe, but said he always considered Lowe as a Democrat.

This character of evidence, which runs through the record, shows that Lowe's lawyers tried to make it appear that all the election officers who called themselves Democrats were supporters of Wheeler, when the fact was frequently the contrary.

Such evidence as this shows what was meant by their Democracy.

There is not a particle of positive proof that Mr. Harris supported or voted for Wheeler.

It must be borne in mind that this evidence of Mr. Reynolds was written down in short-hand by Mr. Buell, the friend of Colonel Lowe; yet even with this, Mr. Reynolds informs us of his opinion of the character of the man who became the box custodian.

He says of him, bottom of page 445: "He might say he voted for one man, and then not do it."

Mr. Reynolds also says, page 445:

The general opinion was that he (Wheeler) was getting over the Democratic vote there.

The question, and what purports to be an answer to the question, found on bottom of page 447, is easily explained. Every lawyer who has examined witnesses knows that frequently when asked a question they repeat the question in an interrogative manner to be certain they understood the question correctly.

This is particularly the case with reluctant witnesses who are trying to make the best show possible for the party in whose interest they are being examined. This was eminently the case here. Mr. Reynolds repeated the question verbatim, and Mr. Lowe's friend, the stenographer, writes down Mr. Reynolds's question, omitting the interrogation mark, and thus makes it appear that it was his answer.

This could not be corrected, because no one but the stenographer could read the short-hand notes; and therefore no one but the stenographer could know with any certainty what was meant by his short-hand marks.

Mr. Simmons, a Republican and a Lowe man, and supervisor, and witness for Colonel Lowe, was more willing to admit that the box was carried off by one of the inspectors, and also says, page 453½, that the next day they sorted out the tickets into three piles—Republican tickets to themselves, Greenback tickets to themselves, and Hancock tickets to themselves.

This certainly impaired Wheeler's chances to get the Garfield tickets with his name on them counted for him.

When Wheeler heard this he felt it so keenly that he sent in his sworn protest against the counting of said box, which is found on bottom of page 1062.

Had the contestee known of the other irregularity would he not have included that in his protest?

Simmons mentions, page 455¾, three different elections where he states it as his opinion that Harris voted against the Democratic party.

On page 453½ he states that he said two or three times during the day that Wheeler was getting a larger vote than he did get, and that he thought so too.

Now, Mr. Beemer swears positively, page 1128, that Harris was an Independent voter; and Mr. Jones swears, page 1087, that Mr. Harris was accustomed to vote split tickets. Also T. A. Tatham swears, page 1106, that John H. Harris, who acted as inspector at Courtland box No. 2, claimed to be an Independent voter.

He also says that Harris supported Sam Houston and W. B. McDonald and Alex. Heflin in opposition to the Democratic party; and it will be observed that this same Heflin swears, page 460, that he too was a Democrat, but admits that at the last election (namely Nov. 2, 1880) he voted the Greenback ticket; he also admits he was elected sheriff on the Greenback ticket in August, 1880. (See pp. 460½, 461½.)

Now, this man Heflin, after giving testimony against Wheeler which shows falsity on its face, tries to bolster it up by trying to create an inference that he was a Democrat. He was just as much a Democrat as men who supported him three months before, when he ran as a Greenbacker for sheriff. This shows the object of Lowe's witnesses in calling the inspector a Democrat. They wished to create an impression that the Courtland box was not manipulated to the detriment of Wheeler.

Had Mr. Harris been put on the stand we cannot say what his evidence would have been. Mr. Reynolds says, "*He might say he voted for one man and then not do it.*" Contestee could not have been expected to make Mr. Harris a witness.

The fact that the box was carried off in violation of law impeached it,

and it was Mr. Lowe's duty to have shown that its integrity was maintained. Mr. Lowe's lawyers were fully informed in the commencement of the taking of testimony-in-chief that the box was carried off and kept all night unlocked. If it had been possible for Mr. Lowe to have procured evidence to sustain the integrity of the box it seems to us he would certainly have done so.

We respectfully submit that the evidence conclusively proves that Courtland box No. 2 was managed entirely by men who were at least not the friends and supporters of Wheeler.

Some may have been Hancock men, but certainly the evidence does not show they were Wheeler men.

When the ballots were partly counted out one of these men claimed they had made a mistake, and to correct this they put all the ballots in a rough box, and Mr. Harris carried the box to his room, kept it all night, returned with it the next morning, when it appears from the evidence the ballots were easily though illegally counted in a very short period, when a report was made showing 419 votes for Lowe and 111 votes for Wheeler.

Mr. Lowe's friends admit that these inspectors worked from five o'clock, the time the polls closed, until two o'clock next morning, and during those nine hours they claim they had counted less than six hundred ballots.

These men wish the committee to believe that they acted with proper rapidity, and yet failed to count out 60 ballots an hour, when it was evident that all these ballots could have been easily counted out in two or at most three hours.

Above and beyond this Mr. Lowe's witness Mr. Simmons, page 453, swears that after counting nine hours they discovered they had made a mistake, and Mr. Lowe's other witness, Mr. Reynolds, swears, page 444, that after the nine hours they yet lacked right smart of completing the count.

Is it not clear that there was wrong connected with this box?

These ballots could have been easily counted out in two or three hours, and by seven or eight o'clock a correct report could have been completed, and yet we find these men at two o'clock in the morning had done nothing but count a part of the ballots, and the only result of these nine hours' work was the discovery that they had made a mistake.

The committee cannot see how it was possible these friends of Colonel Lowe discovered a mistake, when Mr. Reynolds says they lacked right smart of counting all the ballots.

Does it not show that all this dallying of nine hours gave an opportunity to corruptly tamper with the ballots?

Does it not show that the mistake discovered was that Wheeler had more ballots than some one wished him to have, and some one therefore found it necessary to secretly fix up the box to meet the requirements of Mr. Lowe's managers?

They did not have Wade Blankenship or William Wallace there to examine the wrists and sleeves of free Americans and compel them to vote for Mr. Lowe, and the evidence is conclusive that at least a hundred Democrats and at least a hundred Republicans voted for Wheeler.

The Wheeler ballots were in the box, and the difficulty of changing them with five or six people present was staring them in the face.

We respectfully submit that there has never been stronger evidence before Congress assailing the integrity of a box than we have here presented.

If Mr. Reynolds had been a friend of Wheeler would he have gone

voluntarily 43 miles to testify for Mr. Lowe? Would he have resisted each effort to develop these facts, as his evidence shows he did? (See page 444.) His anxiety was so great that he swore, page 447 $\frac{2}{3}$, that the votes were counted fairly. He says:

I watched over it myself.
I saw it was done well.
I was in the house.

And then he afterwards admits this was not true, and he swears, top of page 448:

I was not absent but a few minutes during the counting in the daytime in the last count.

And top of page 445 he says:

Well, I was not there all the time, but I was there nearly all the time.

We could go on with this discussion, but the House will certainly admit that it requires nothing further to show that this box must be rejected.

The evidence that the ballots were tampered with at this poll is very much stronger than at "*Arredonda poll*" (case of Bisbee *v.* Finley), and we might add that it is stronger than any other case before this committee.

The violation of law by the inspectors is proven by Mr. Lowe's witnesses, and most of the evidence is given by Republicans.

It proves positively that there was palpable violation of the law and flagrant fraud at this box.

This fraud was distinctly charged in the answer to the notice of contest, and it was proved, by the evidence of numerous witnesses, and not one word of the evidence is in any way controverted.

Harris was not called as a witness. Where he took the box; how he kept it; whether any person had access to it other than himself; whether he himself examined it, or did anything with it or with the ballots in it during these hours that it was away from its proper custody and not subject to proper supervision—as to all these things the evidence is a total blank, except as above alluded to and hereafter stated. The next morning Mr. Harris brought back what purported to be the box he took away with him, and the contents of that box, whatever they were, were counted; but we contend that the proof shows that the ballots did not remain the same, because the testimony proves that at that poll the contestee received at least 200 votes, whereas there was only returned for him 111, thus showing that the count as made did not correspond with the ballots as cast. We submit, therefore, that this box must be rejected, and this will deduct from the contestant 419 and from the contestee 111. Now, the box being rejected, as it certainly must be, then, according to all the rulings of the majority of the committee in other cases, and according to the plain law on this subject, the parties are remitted to the proof of the ballots actually cast for them respectively, and it being proved that the contestee received 200 votes at that poll, this number should be added to his aggregate vote.

Before concluding we feel it our duty to allude to the character of evidence which Mr. Lowe has presented to the Committee on Elections.

Evidence by deposition is in derogation of common law. It is only by virtue of statute that such evidence can be used in any judicial tribunals.

The supreme court of Pennsylvania, using the language which we find in every elementary work on evidence, said:

The taking of testimony by deposition is at best but a very imperfect way of arriving at the truth; every precaution should, therefore, be taken to guard against abuses.

We approve of this expression, and think that evidence taken with disregard of the statutory requirement should not be received.

We have alluded to this subject in referring to the depositions taken at Lanier's, but we think it requires a more special attention.

The following are the provisions of the Revised Statutes of the United States material to the point now under consideration:

SEC. 122. The officer shall cause the testimony of the witnesses, together with the questions proposed by the parties or their agents, to be reduced to writing in his presence and in the presence of the parties or their agents, if attending, and to be duly attested by the witnesses respectively.

SEC. 127. All officers taking testimony to be used in a contested-election case, whether by deposition or otherwise, shall, when the taking of the same is completed, and without unnecessary delay, certify and carefully seal and immediately forward the same by mail addressed to the Clerk of the House of Representatives of the United States, Washington, D. C.

The corresponding provisions of the judiciary act of 1789 are in the following words:

And every person deposing as aforesaid shall be carefully examined and cautioned and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given after the same shall be reduced to writing, which shall be done only by the magistrate taking the deposition, or by the deponent in his presence. And the depositions so taken shall be retained by such magistrate until he deliver the same with his own hand into the court for which they are taken, or shall, together with a certificate of the reasons as aforesaid of their being taken, and of the notice, if any, given to the adverse party, be by him, the said magistrate, sealed up and directed to such court and remain under his seal until opened in court.

The provision that the deposition must be reduced to writing in the presence of the officer is common to the contested-election law and the judiciary act of 1789.

It is obvious, therefore, that decisions of the Federal courts on the provision of the judiciary act for the writing out of the deposition will be authorities in cases which may come before this committee under the corresponding provision of the statute relating to contested elections.

In *Bell v. Morrison*, 1 Peters, 351, Judge Story, delivering the opinion of the court—

Held that under section 30 of the judiciary act a deposition is not admissible if it is not shown that the deposition was reduced to writing in presence of the magistrate.

In *Edmonson v. Barrett*, 2 Cranch C. C., 228, the plaintiff's attorney offered in evidence on the trial the deposition of John Marshall, of Charleston, South Carolina, taken before the Hon. John Drayton, district judge of the United States. The certificate of the judge was in the following words:

DISTRICT OF SOUTH CAROLINA, ss:

On this 28th day of May, 1818, personally appeareth the under-named deponent, John Marshall, of Charleston, merchant, before me, the subscriber, John Drayton, district judge of the district aforesaid, and being by me carefully examined, cautioned, and sworn in due form of law to testify the whole truth and nothing but the truth relating to a certain civil cause, &c., &c., he maketh oath to the deposition above written, and subscribes the same in my presence, the said deposition being first reduced to writing by the deponent.

The attorney for the defendant objected to the deposition on the ground that the judge had not certified that it was reduced to writing in his presence, as required by section 30 of the judiciary act of 1789.

The attorney for the plaintiff contended that it was to be presumed to have been so written because the law required it.

But the court unanimously sustained the objection and rejected the deposition.

In the case of *Pettibone v. Derringer*, 4 Wash., 215, tried in the circuit court of the United States for the 3d circuit, at Philadelphia, in 1818, before Justice Washington, of the Supreme Court of the United States, and District Judge Peters, objection was made on the trial to the introduction of a deposition on the ground that the officer who took that deposition had not certified that it was reduced to writing by the witness in his presence. The court sustained the objection and held—

That a deposition taken under the thirtieth section of the judiciary act cannot be used unless the judge certifies that it was reduced to writing either by himself or by the witness in his presence.

In the case of *Rayner v. Haynes*, Hempst., 689, decided by the United States circuit court for the 9th circuit, in 1854, depositions offered by the attorneys for the defendant were objected to on the ground that *the magistrate failed to state that the depositions were reduced to writing in his presence*, and the objection was sustained by the court.

In the case of *Cook v. Burnley*, 11 Wall., 657, when the defendants' case was reached in the course of the trial, the defendants offered to read a deposition taken under section 30 of the judiciary act. There was no certificate by the magistrate that he reduced the testimony to writing himself or that it was done by the witness in his presence. The deposition was excluded by the district court. The Supreme Court of the United States said :

There is no certificate by the magistrate that he reduced the testimony to writing himself or that it was not done in his presence, which omission is fatal to the deposition.

In *Baylis v. Cochrane*, 2 Johnson (N. Y.), 416, Chief Justice Kent, delivering the opinion of the court, said :

The manner of executing the commission ought not to be left to inference, but should be plainly and explicitly stated. It would be an inconvenient precedent and might lead to great abuse to establish the validity of such a loose and informal system. Matters which are essential to the due execution of the commission ought to be made to appear under the signature of the commissioners. Among these essential matters is the examination of the witness on oath by the commissioners and the reducing of his examination to writing by them, or at their instance and under their care. We are accordingly of the opinion that the judgment of the court below ought to be affirmed.

While the particular facts in this New York case differ from the facts of the case now on trial, it is quite unnecessary to suggest the forcible application of the doctrine of that case to this.

The case of *Summers v. McKim* (12 S. & R., 404) is a very strong authority on the point now under consideration. There was at the time no law in Pennsylvania requiring the deposition to be reduced to writing in the presence of the officer. There was no rule of court to that effect. The only regulation on the subject was a rule of court requiring the deposition to be *taken before a justice*. But Chief Justice Tilghman, delivering the opinion of the court, said :

The third bill of exception contains two distinct points. The first point is on the admissibility of the deposition of George Leech; several exceptions were made to this evidence, but there was one which was decisive; and as it involves a principle of great importance in practice, I am glad that an opportunity is offered to the court of settling it. This deposition was taken under a rule of court before a justice of the peace of Clearfield County, but it was drawn up in the city of Lancaster, from the mouth of the witness, by Mr. Hopkins, counsel for the defendant, and then sent to Clearfield County and sworn to there. Now, although the character of the counsel in the present instance puts him above all suspicion of unfair dealing, yet it would be a practice of most dangerous tendency if depositions so taken were to be

admitted as evidence. The counsel of the party producing the witness is the last person who should be permitted to draw the deposition, because he will naturally be disposed to favor his client, and it is very easy for an artful man to make use of such expressions as may give a turn to the testimony very different from what the witness intended. I know that depositions are sometimes taken in this manner by consent of parties; and when the counsel on both sides are present the danger is not so great, but in the present case there was no consent, nor was the counsel of the plaintiffs present. The rule of court is that the deposition shall be taken *before a justice*. It ought, therefore, to be reduced to writing from the mouth of the witness in the presence of the justice, though it need not be drawn by him; and in case of difference of opinion in taking down the words of the witness the justice should decide. In chancery, if the counsel of one of the parties draws the deposition before the witness goes before the commissioners, it will not be permitted to be read in evidence. (1 How. Ch., 360.) This certainly is a good rule. The taking of testimony by deposition is at best but a very imperfect way of arriving at the truth; every precaution should, therefore, be taken to guard against abuses. It is very clear to me that the mode in which the deposition of George Leech was taken is subject to great abuse, and should be put down at once. I am of opinion, therefore, that was very properly rejected.

See also the following cases: United States *v.* Smith, 4 Day, 121; Railroad Co. *v.* Drew, 3 Woods C. Ct., 692; Beale *v.* Thompson, 8 Cranch, 70; Shankriker *v.* Reading, 4 McL., 240; United States *v.* Price, 2 Wash. C. Ct., 356; Hunt *v.* Larpin, 21 Iowa, 484; Williams *v.* Chadbourne, 6 Cal., 559; Stone *v.* Stillwell, 23 Ark., 444.

The proof in this case shows:

1ST.

That 49 depositions found on pages 34 to 266 and 302 to 452 of the record in this case have no certificates at all, and the proof shows that they were not written out in the presence of the commissioner before whom it is claimed they were taken.

2D.

That exhibits were attached to some of these depositions which the witnesses did not see.

3D.

That exhibits were attached to depositions which were not correct copies of records which they purport to represent.

4TH.

That a transcript from the probate judge of Morgan County was changed, and that matter was written upon said transcript after it reached the hands of Mr. Lowe or his agents or attorneys, and the matter written thereon was made the basis of an argument in contestant's brief.

5TH.

That a false exhibit was filed with the record and printed in the record following the deposition of Lowe Davis, which false exhibit was made the basis of an argument in contestant's brief.

6TH.

That the affidavits attached to the motion to suppress show that the certificate attached to the deposition of Mr. Lowe was not written out

and attached to said deposition until several days after the date it purports to have been so written out and attached.

7TH.

That the so-called deposition of William Wallace, James Jones, John Kibble, Alexander Jamar, and 50 other witnesses were never legally signed.

8TH.

That the 110 so-called depositions found on pages 1264 to 1340 of the record are without any certificate whatever, and there is nothing in the record to show that any of the witnesses were sworn, or that any of the evidence was written down in the presence of any commissioner.

9TH.

That the so-called depositions taken before E. P. Shackleford are not certified under his seal as required by law.

10TH.

That 171 so-called depositions which it is claimed were taken before R. W. Figg, esq., were not certified and sealed and forwarded by mail addressed to the Clerk of the House of Representatives.

The record shows that said so-called depositions reached the Clerk of the House of Representatives through a corporation called an express company. It shows they were in a box which was not sealed in any way whatever.

It also shows that many of said depositions remained out of the hands of the commissioner before whom it is claimed they were taken from two to three months before being so illegally transmitted to Congress.

11TH.

The record also shows that depositions which were taken before A. W. Brooks, found on pages 331 to 338, were not taken at a time which the law allowed said depositions to be taken, and it further shows that, contrary to law, they were transmitted to the Clerk of the House of Representatives by a corporation called an express company, and not by mail, as required by law.

12TH.

The record shows that fifty witnesses examined before A. J. Bentley, at Meridianville, were examined without giving contestee notice, as required by law.

That Mr. Lowe's attorneys gave contestee notice they would take said evidence at or near Pleasant Hill, and upon said notice they proceeded to and did take said evidence at Meridianville, six miles from Pleasant Hill.

That when the place of taking evidence was finally discovered by Mr. Wheeler's attorney, the commissioner refused to allow him to cross-examine some thirty witnesses who were examined after his arrival; and it further shows that Lowe Davis, the attorney for Mr. Lowe, wrote

down the evidence, and in some cases wrote it down to convey a different and contrary meaning from that given by the witnesses, and the record shows that this illegally-taken evidence was not certified as required by law, and that it was not transmitted to Congress as required by law.

The record also shows, after Mr. Wheeler had facilitated Mr. Lowe's attorneys in taking evidence by acknowledging service to their notices to take testimony, these same attorneys used most extraordinary and unwarranted means to embarrass and delay Mr. Wheeler in his efforts to take testimony, and that by such means they in some instances stopped the contestee in his efforts to take testimony.

Mr. Wheeler made and filed proper and seasonable motion to suppress these depositions, supporting by affidavits such allegations as were not apparent on the record.

We think the 49 depositions which purport to have been taken at Huntsville before R. W. Figg, esq., and the 110 which purport to have been taken before him at Lanier's, and the 30 which purport to have been taken before A. J. Bentley, at Meridianville, should be suppressed and not considered in this case.

CONCLUSION.

We now make the following summaries of the legal votes to which the contestant and contestee are respectively entitled under the law and the evidence.

With regard to the illegal ballots counted for Mr. Lowe we find that 1,294 are proven by the inspectors or officers of election at the 32 precincts where they were cast, which are fully cited in a table which is found on page 54 of this report.

These witnesses were under the laws of Alabama the custodians of these ballots, and in most cases they corroborate their recollections by counting the ballots in the presence of the commissioner, and they then take one or more of the ballots from the box and put them in evidence by attaching them to their depositions.

There is some proof that in addition to the 1,294 illegal ballots there were also counted for Mr. Lowe as many as 1,734 illegal Weaver and Lowe ballots, but as the proof regarding these latter ballots is not as satisfactory as that regarding the former, we conclude to only consider the 1,294 proven by primary evidence.

Kinlock box.

The proof on this box is so positive and uncontradicted that we do not think the House will hesitate to deduct 16 votes from Mr. Lowe.

Unregistered voters.

An examination of the record shows that over 3,000 persons' names are found upon the poll-lists in 29 different precincts, which names are not found in the registration lists.

We also present a table, marked No. 2, by which we refer the House to direct and specific proof showing that 1,027 unregistered voters voted for Mr. Lowe.

Mr. Lowe was unable to and failed to prove that a single unregistered voter voted for Mr. Wheeler.

Table No. 2 gives pages in the record where the evidence is found, and also the name of at least one witness whose testimony is relied upon.

It is also shown by Table No. 1 that at the 29 polling places mentioned in said table 2,698 illegal unregistered persons voted.

But to do the contestant no injustice we deduct 298 from the 2,698 unregistered voters, leaving 2,400 persons who voted at these 29 precincts, and who were not registered.

At these 29 polls Lowe had returned for him 5,630 and Wheeler had returned for him 2,625 votes.

Now, in the absence of proof for whom these illegal votes were cast the law says that one of three rules must be adopted—

1st. Either deduct all from him who had a majority at each poll.

2nd. Or reject the poll.

3rd. Or deduct the illegal votes *pro rata*.

The first rule would deduct 2,400 from the vote of William M. Lowe.

The second rule would deduct 5,630 from the vote of William M. Lowe and 2,625 from the vote of Joseph Wheeler, leaving 3,005 as the balance or total reduction of the vote of William M. Lowe.

By the third or *pro rata* rule there would be deducted from the vote of William M. Lowe 1,642, and from the vote of Joseph Wheeler 758, leaving the balance or net amount to be deducted from the vote of William M. Lowe at 884, which is the least possible deduction which can be made from the vote of William M. Lowe under either of these three rules.

To show that the *pro rata* rule does Mr. Lowe more than justice we cite the House to Table No. 2, which shows that 1,027 unregistered persons voted for him; and 541 of the persons included in Table 2 are the same as those included in Table No. 1.

For instance, at Courtland box No. 2 it is proved that 189 unregistered persons voted for William M. Lowe, and on the *pro rata* rule he is only charged with 111; therefore we are entitled to add 78 bad votes to the 994 (changed to 884) bad votes in Table No. 1.

By adopting the same plan with regard to other boxes we make out Table No. 3:

Table No. 3.

Number of unregistered persons which are included in Table No. 2, and who are proven to have voted for William M. Lowe, and who are not included in the 994 (changed to 884) persons referred to in Table No. 1.

| Precinct. | |
|----------------------------|----|
| Brickville | 18 |
| Courtland, No. 2 | 78 |
| Whitesburg | 31 |
| Meridianville, No. 2 | 18 |
| Carpenter's | 3 |
| Red Bank | 4 |
| Hawk's Springs | 4 |
| Bishop's | 12 |
| Scottsborough | 11 |
| Davis' Springs | 16 |
| Maysville | 55 |
| Moulton | 16 |
| Athens | 16 |
| Centre Star | 12 |
| Cave Spring | 22 |
| Cluttsville | 13 |
| Meridianville, No. 1 | 89 |
| Hampton's | 6 |
| Mooresville | 17 |
| Slough Beat | 36 |
| Shoal Ford | 5 |
| South Florence | 4 |

Table No. 2 includes several boxes which are not included in Table No. 1, and we find that 486 unregistered men who are not included in Table No. 1 voted for Mr. Lowe.

Now, adding these 486 votes in Table No. 3 to the 884 obtained by the *pro rata* rule (see Table No. 1), we find that the total number of unregistered votes which must be deducted from the vote of William M. Lowe amounts to 1,370.

We therefore conclude that according to the proof in this case there should be deducted from the vote of William M. Lowe 1,370 illegal unregistered votes.

As we have concluded that Courtland box No. 2 should not be counted, and as 189 of these unregistered votes were cast at that box, we must deduct these 189 illegal votes from the 1,370, leaving 1,181 unregistered votes exclusive of Courtland box No. 2.

But to be still further certain, and do the contestant full justice, we make a further arbitrary reduction of 81 votes, and we decide to deduct 1,100 illegal unregistered votes from the vote of William M. Lowe.

Non-residents.

The proof shows that 81 non-residents of the State of Alabama voted for Mr. Lowe, and we think they should be deducted from the vote of William M. Lowe.

It is claimed by Mr. Lowe that the 9 votes which the inspectors at Lanier's deducted from Mr. Wheeler and the 2 votes which they deducted from him were not corrected by the county officers. This would make a difference of 7 votes against Mr. Wheeler.

The proof with regard to this matter is tainted by the fraudulent exhibit which appears following the deposition of Lowe Davis.

It is also claimed by Mr. Lowe that Flint precinct was not counted in the returns of Morgan County, and that this precinct gave him 17 majority, but the proof regarding this matter is contradictory, and is tainted by a forgery which the affidavit of the probate judge shows was indorsed upon it after it went in the hands of Mr. Lowe or his attorneys.

If both these were allowed it would make a difference of 24 votes in favor of Mr. Lowe.

Minors.

The proof shows that 16 minors voted for Mr. Lowe, and we think that number should be deducted from his vote.

SUMMARY No. 1.

| | |
|--|--------|
| Votes returned for Mr. Wheeler..... | 12,808 |
| Votes returned for Mr. Lowe..... | 12,765 |
| From which deduct votes cast for Mr. Lowe by persons who were not registered..... | 1,100 |
| Deduct illegal ballots proved to have been cast and counted for Mr. Lowe..... | 1,294 |
| Deduct non-residents proven to have voted for Mr. Lowe.... | 70 |
| Deduct minors proven to have voted for Mr. Lowe..... | 10 |
| Deduct Kinlock box, illegally returned for Mr. Lowe..... | 16 |
| Deduct Courtland box No. 2 (Lowe's majority)..... | 308 |
| | 2,798 |
| Mr. Lowe's legal vote..... | 9,967 |
| Mr. Wheeler's majority..... | 2,841 |

SUMMARY NO. 2.

| | |
|--|--------|
| Votes returned for Mr. Wheeler..... | 12,808 |
| Votes returned for Mr. Lowe..... | 12,765 |
| From which deduct votes of unregistered persons by the Mc- Crary or <i>pro rata</i> rule..... | 884 |
| Deduct illegal ballots proved to have been cast and counted for Mr. Lowe..... | 1,294 |
| Deduct non-residents proven to have voted for Mr. Lowe.... | 70 |
| Deduct minors proven to have voted for Lowe..... | 10 |
| Deduct Kinlock box, illegally returned for Mr. Lowe..... | 16 |
| Deduct Courtland box No. 2 (Lowe's majority)..... | 308 |
| | — |
| | 2,582 |
| Mr. Lowe's legal vote..... | 10,183 |
| Mr. Wheeler's majority..... | 10,183 |
| | — |
| | 2,625 |

Now, if we deduct 7 votes from Mr. Wheeler at Lanier's and add 17 votes to Mr. Lowe at Flint, it will make a difference in Mr. Lowe's favor of but 24 votes, and if we should give him all he asks, counting for him the 525 votes which he claims were rejected, and the votes he claims to have proven at Meridianville and Lanier's, Mr. Wheeler's majority would still be nearly 2,000.

It seems to us there is no question but that under the rule adopted by the majority of this committee they should count for Mr. Wheeler the 200 votes which the proof positively shows were cast for him at Courtland box No. 2.

This would make Mr. Wheeler's majority 200 greater than shown by the tables.

We therefore recommend the adoption of the following resolutions:

Resolved, That Joseph Wheeler is entitled to a seat in this House as a Representative in the Forty-seventh Congress from the eighth Congressional district of Alabama.

Resolved, That William M. Lowe is not entitled to a seat in this House as a Representative in the Forty-seventh Congress from the eighth Congressional district of Alabama.

GEORGE W. WITHERSPOON vs. ROBERT H. M. DAVIDSON.

FIRST CONGRESSIONAL DISTRICT OF FLORIDA.

DISMISSED FOR WANT OF PROSECUTION.

JUNE 6, 1882.—Mr. RANNEY, from the Committee on Elections, submitted the following—

REPORT:

The Committee on Elections, to whom was referred the case of Witherspoon vs. Davidson, first Congressional district, Florida, respectfully submit the following report:

In this case there was no notice of contest or answer, and no evidence taken legally which the committee had before them. Contestant ap-

peared and produced an affidavit, a copy of which is appended to this report, with the counter-affidavit of contestee. (Exhibits 1 and 2.) The committee caused a notice to be sent and delivered to the counsel named in contestant's affidavit, asking him to produce the papers in his hands, but he has omitted and declined to do so, he having taken no notice of the letter sent him, a copy of which is annexed, save to acknowledge the receipt of same. (Exhibits D, E, F.)

Contestee exhibited to the committee the copies of the notice of contest served upon him and his answer thereto, together with a replication and amended notice, copies of which are annexed (Exhibits A, B, C), and moved to dismiss the proceedings. It was claimed and it appears that the notice of contest was insufficient and inadequate. It alleges certain frauds very generally, but does not set up or allege that contestant was elected. The replication enlarges the notice, however, and obviates some if not all of the objections.

The committee are of the opinion that contestant's failure to prosecute his contest arose from the causes which he sets forth in his affidavit. But they see no way of procuring the papers, or of investigating the case further, unless the House take the matter in hand and do it in their own way, either by sending a special committee to Florida to take the evidence or otherwise.

There is nothing which implicates contestee in any of the wrongful proceedings referred to.

The committee report the facts, and recommend that the contestant have leave to withdraw his contest without prejudice.

EXHIBIT.

DISTRICT OF COLUMBIA.

City of Washington:

Personally came and appeared before the undersigned, a notary public in and for the District and city aforesaid, George W. Witherspoon, who, being first duly sworn according to law, deposes and says that he was the candidate of the Republican party at the regular election held on the 2d day of November, 1880, for Representative in Congress from the first Congressional district of the State of Florida. That at and during the time fixed by law for the registration of the legal voters of said State and district gross irregularities and frauds were committed upon his supporters and partisans by the supporters and partisans of his opponent, R. H. M. Davidson, in this, that many supporters of Davidson were illegally and fraudulently registered, and many of the said deponent's supporters were illegally denied registration. That after the registration books were closed the supporters and partisans of his opponent, the said Davidson, erased and struck from the registration books and records unlawfully the names of many of the supporters of deponent, and by this means deprived them of the right to vote.

He further deposes and says that gross frauds were committed at said Congressional election by the supporters and partisans of his opponent, the said Davidson, by stuffing the ballot-boxes with *tissue ballots*, false and fraudulent countings of votes, particularly in the counties of Jefferson, Taylor, Leon, Jackson, Escambia, and Levy.

And that after he was defrauded out of his election by the methods herein described he served notice of contest as prescribed by law upon his opponent, and received answer thereto, and made due preparation and diligence to prosecute his contest as is by the act of Congress in such cases made and provided. That he employed as his attorney T. W. Brevard, esq., and paid him \$125 as a retaining fee to prosecute his case against his opponent, the said Davidson, and that the said Brevard utterly failed to do so, and betrayed him and sacrificed all his interests in the contest; and your deponent has reason to believe and does believe that the said Brevard entered into collusion with and conspired with Davidson for the purpose of defeating him, deponent, in his contest. He took from him, and declined and refused to return to your deponent, his notice of contest, the answer thereto, and other valuable papers and evidences essential to the successful prosecution of the case.

He further deposes and says that his witnesses were intimidated and prevented from

appearing to testify in his behalf by threats of violence, and of being discharged from labor, and of being ejected from rented lands and houses, and by refusals of stock and implements to cultivate and gather their crops, and other threats of persecution and proscription, if they should attempt to testify in behalf of your deponent.

In proof of these facts your deponent cites particularly a riot instigated in Madison County by the supporters and partisans of the Democratic party for the purpose of intimidating witnesses, at which riot one Patterson was killed, on account of which many arrests were made and the parties cast into jail, which had the effect of intimidating a large number of deponent's witnesses to an extent which made it impossible to induce them to testify in his behalf.

He further deposes and says that in some cases (that of Christie particularly) the officers of the law before whom appointments were made to take testimony, and where witnesses had been secured at great trouble and expense, the officer failed or refused to attend and hear testimony taken. By these and other methods only known to the lawless and mob-ridden communities of the South your deponent was defrauded out of his election and denied the right of exposing and proving the fraud, under the act of Congress made and provided in such cases. Therefore he prays that a committee be appointed with authority to proceed to Congressional district aforesaid, and make a thorough investigation and report on the conduct and result of said election, with the view of ascertaining and determining who was lawfully elected as Representative in the Forty-seventh Congress of the United States from said first district of the State of Florida.

GEO. W. WITHERSPOON.

Subscribed and sworn to before me this 13th day of December, A. D. 1881.

[SEAL.]

WM. T. S. CURTIS,
Notary Public, District of Columbia.

EXHIBIT 2.

Contested-election case, first Congressional district, State of Florida, House of Representatives, first session.

WITHERSPOON }
vs.
DAVIDSON. }

DISTRICT OF COLUMBIA,
City of Washington, to wit:

On this day, before me, Frank Galt, a notary public of the District and city aforesaid, personally appeared Robert H. M. Davidson and made oath that he has read the affidavit of George W. Witherspoon, contestant in aforesaid case, from the first Congressional district of Florida, and dated the 13th day of December, 1881; that all charges contained therein of fraud or intimidation of voters or witnesses, or that there was any cause of danger to any person who might testify in said Witherspoon's behalf, affiant believes to be absolutely untrue; that the riot to which said contestant refers took place in the other Congressional district in said State of Florida, during which riot the colored people killed one white man, and no colored man was hurt; that contestee was ready and willing, at any and all times and places, to attend the taking of depositions, either by himself or counsel, after due notice being had; but that the contestant made no effort, to affiant's knowledge, to take any depositions, but did take some *ex parte* affidavits without the knowledge of affiant; that in so far as contestant seeks to implicate contestee as being in collusion with one of the alleged attorneys of said contestant F. W. Brevard, the charge is absolutely and unconditionally false in every shape and form; and that the contestee never heard of the loss of any paper, as alleged in the aforesaid affidavit of George W. Witherspoon, of date December 13, 1881, until said affidavit was read, in his presence and hearing, before the Committee on Elections of the House of Representatives some time during the current year, 1882.

Given under my hand this 26th day of April, 1882.

R. H. M. DAVIDSON.

Sworn and subscribed to before me this 26th day of April, A. D. 1882.

[SEAL.]

FRANK GALT,
Notary Public.

EXHIBIT A.

Notice of contest.

GEORGE W. WITHERSPOON {
 vs.
ROBERT H. M. DAVIDSON. }

SIR: You are hereby notified that I shall contest your election as a Representative in Congress from the first Congressional district in the State of Florida, comprising the counties of Escambia, Santa Rosa, Walton, Holmes, Washington, Jackson, Calhoun, Franklin, Liberty, Gadsden, Walkulla, Leon, Jefferson, Taylor, Lafayette, Levy, Hernando, Hillsborough, Manatee, Polk, Sumter, and Monroe, for the Congressional term for which you claim to have been elected from said district at the general election held in said State and district on the second day of November, 1880, for the following reasons, to wit:

First. That the board of county commissioners in the respective counties aforesaid, and in the said district, on the first Monday in October, 1880, revised the registration list in the said district and counties aforesaid, filed by them in the office of the clerk of the circuit courts in said district and counties, and erased therefrom the names of Republican electors who were living, and who had not ceased to reside permanently in the county, or who was otherwise disqualified to vote, and on the third Monday in said month and year the said county commissioners, in said respective counties, refused, neglected, and omitted to hear the complaints of those who claimed that their names had been improperly erased from the said registration lists, and prevented said voters from declaring, under oath, before the said board of county commissioners in said counties, at any time between said first day of October, 1880, and the 22nd day of October, 1880, both inclusive, their qualifications as voters under the laws of the State of Florida, in such cases made and provided.

Second. That the clerk of the circuit courts in the respective counties aforesaid, between the said first Monday in October, 1880, and the said 22nd day of October, 1880, both inclusive, refused, neglected, and omitted to replace the names of the said electors on said list of registered voters in the respective counties as aforesaid, as required by the statutes of the State of Florida in such cases made and provided.

Third. That the said clerk of the said courts, and the deputy clerks by them appointed as deputy registration officers, refused, neglected, and omitted to register in the election districts in the aforesaid district and counties the names of Republican electors, as required to do by law, contrary to the statutes of the State of Florida in such cases made and provided.

Fourth. That on the said first Monday of October, 1880, the said board of county commissioners in the respective counties as aforesaid refused, neglected, and omitted to appoint three intelligent and discreet electors, resident in their respective counties, who could read and write, and who represented both political parties, as inspectors of election for the polling place or precinct in each election district in the respective counties as aforesaid, for which they were appointed, and said respective boards of county commissioners refused, neglected, and omitted to publish, or post in a conspicuous place in each election district, twenty days before the 2nd day of November, 1880, the names of the three inspectors appointed for the polling place in such election district, as required by the statutes of the State of Florida in such cases made and provided.

Fifth. That the clerks of the circuit courts in the respective counties as aforesaid refused, neglected, and omitted, within three days after the first Monday in October, 1880, to give notice by publication or otherwise, setting forth therein the boundary lines of each election district, and that the electors in each election district should register with the deputy clerks or registration officers therein named for the election district, and with no other, as required by the laws of Florida in such cases made and provided.

Sixth. That the said clerks of the circuit courts in the respective counties aforesaid refused, neglected, and omitted, five days before the said 2nd day of November, 1880, to prepare and open for inspection in their offices respectively separated lists of the persons entitled to vote at the several voting places or precincts in the said counties, as required to do by the laws of Florida in such cases made and provided.

Seventh. That the inspectors of election at the respective polling places or precincts, in the respective counties as aforesaid, between the hours of eight (8) o'clock in the forenoon and sunset in the evening on the said second (2nd) day of November, 1880, refused to admit inside the said polling places a representative of the Republican party, who was named by the adherents of said party, at said respective polling places in said district and counties, contrary to the statutes of the State of Florida in such cases made and provided.

Eighth. That the said inspectors of election at the respective polling places or precincts in the counties aforesaid received ballots other than plain white paper, upon which was printed the names of the candidates of the Democratic party, and placed said ballots in the ballot-boxes, and canvassed and counted said ballots as having been lawfully voted, contrary to the laws of Florida in such cases made and provided.

Ninth. That the said inspectors of election at the respective polling places or precincts in the respective counties aforesaid refused, neglected, and omitted to administer the oath requisite under the laws of Florida after challenge to Republican electors who claim to be qualified voters, and refused, neglected, and omitted to receive the vote of such electors who offered to take the oath in such cases made and provided by the laws of Florida.

Tenth. That the said inspectors of election in the respective polling places or precincts in the counties aforesaid refused, neglected, and omitted to administer the oath provided by law to Republican electors who claimed that they had duly registered according to law, but whose names did not appear upon the registration books of the respective polling places or precincts in said counties, and refused to receive their votes, contrary to the laws of Florida in such cases made and provided.

Eleventh. That the said inspectors of election in the respective polling places or precincts in the counties aforesaid refused, neglected, and omitted to have nothing in the respective ballot-boxes at the opening of the respective polls, but placed Democratic ballots therein, and then refused to publicly open and expose the said ballot-boxes, contrary to the laws of Florida in such cases made and provided.

Twelfth. That at the respective polling places in the counties aforesaid, Republican electors were, through the action of Democratic inspectors, hindered and prevented from voting, and Democratic electors were permitted to vote tissue ballots, and ballots known as the little jokers, which were canvassed and counted by said inspectors, and the result thereof returned to the board of county canvassers as the lawful result of said election, contrary to the laws of the State of Florida in such cases made and provided.

Thirteenth. That the said inspectors of election in the respective polling places or precincts in the counties aforesaid refused, neglected, and omitted to deliver to the representative of the Republican party, after due demand being made therefor, upon the completion of the count, a statement of the result of the election, contrary to the laws of the State of Florida in such cases made and provided.

That by means of fraud and violations of the election laws, together with intimidation and menace, the Republican electors of said Congressional district were deprived of and prevented from the exercise of their suffrages, and the majority which you now claim to have received was obtained through fraud, intimidation, and menace, and through the action of Democratic inspectors of election, in the respective polling places or precincts in the first Congressional district in the State of Florida, on the second (2d) day of November, 1880, in stuffing ballot-boxes with Democratic ballots, in voting, counting, and canvassing tissue ballots and little-joker ballots, and in permitting Democratic electors known to them to vote many ballots more than one, and upon other names than their own, and by keeping Republican voters from the polls through violence, and by preventing those who were at the polls from voting, as herein set forth.

GEORGE W. WITHERSPOON,
Contestant.

MONTICELLO, FLORIDA,
November 25, 1880.

EXHIBIT B.

Answer.

GEORGE W. WITHERSPOON }
vs.
ROBERT H. M. DAVIDSON. }

The undersigned, Robert H. M. Davidson, having received from George W. Witherspoon a notice that he contests his election as the Representative in Congress from the first Congressional district of Florida, on the second day of November, A. D. 1880, to the Forty-seventh Congress, in answer thereto says:

1. He objects and excepts to the said notice, and protests against the same as vague, indefinite, and uncertain, and insufficient under the statute.
2. He further objects to the same because it does not particularly specify the grounds upon which the said contestant relies in his contest.

3. He further objects because the said contestant does not allege, nor attempt to show therein, that he was elected as a Representative in Congress at the said election, nor that he had a majority or plurality of the votes cast; but if anything is charged it is that no legal election was held in the said district, and if not, the said contestant has no claim to the seat.

4. He further objects because the contestant does not put him upon notice of any particular place where the irregularities are said to have occurred, nor does he specify a single county or election precinct where he lost any votes by the alleged irregularities.

5. He further objects because the contestant does not specify any counties or election precincts where the alleged fraud, intimidation, menace, &c., occurred, nor does he state where Republican electors were deprived of or prevented from the exercise of their suffrage, nor at what election precinct Democratic inspectors are alleged to have stuffed ballot-boxes with Democratic ballots, to have voted, counted, and canvassed tissue ballots and "little-joker" ballots, to have permitted Democratic electors to vote more than once, and upon other names, and to have kept Republican voters from the polls through violence, and to have prevented those at the polls from voting.

6. He further objects because the contestant does not charge that he suffered any detriment or injury by the alleged irregularities.

Subject to the foregoing objections and exceptions and protest, and demanding the full benefit thereof now and at all times hereafter during these proceedings, the contestee answers the said notice, and says in denial of the several specifications:

1. The revision of the registration lists on the first Monday in October, 1880, was made under the laws of the State of Florida, in the several counties of the district and he denies that on the third Monday in said month the county commissioners in the said respective counties refused, neglected, or omitted to hear the complaints of those who claimed that their names had been improperly erased from the said registration lists, and he further denies that the said county commissioners prevented said voters from declaring, under oath before their several boards in any of said counties between the dates mentioned, their qualifications as voters under the laws of Florida as charged.

2. He denies that the clerks of the circuit courts in the said counties, between the dates mentioned, refused, neglected, or omitted to replace the names of any legal and lawful electors on said lists of registered voters, and if any did so refuse it was because they had failed to comply with the laws of Florida governing such cases.

3. He denies that the said clerks and the other registration officers refused, neglected, or omitted to register in the election district in the said counties the names of any legal or lawful electors, whether Republican or Democrat, who made due and lawful application to be registered under the laws of Florida governing such cases.

4. He denies that the said boards of county commissioners on the first day of October, 1880, refused, neglected, or omitted to appoint three intelligent and discreet electors, resident in their respective counties, who could read and write and who represented both political parties, as inspectors of election at the several precincts referred to, and further denies that said boards refused, neglected, or omitted to publish the names of such inspectors as required by law. And if there had been any such failure or neglect it could not have prevented any election or injured the contestant under the laws of Florida governing such cases.

5. He denies that there was any failure to publish the boundary lines of the election districts or the notice to the electors of the place for them to register, as charged.

6. He denies that the said clerks refused or neglected to prepare separate lists of the electors in each precinct or to open the same for inspection, as charged.

7. He denies that the inspectors refused to admit, at the time specified, a representative of the Republican party, named by the adherents of said party, inside the said polling places, as charged.

8. He denies that the inspectors of election at the voting places or precincts in said counties received unlawful Democratic ballots, as charged, or counted or canvassed any such unlawful ballots.

9. He denies that there was any refusal, neglect, or omission on the part of such inspectors of election to administer any lawful oath to any one challenged, who was entitled to or who demanded to take the same, under the laws of Florida governing such cases.

10. He denies that there was any refusal, neglect, or omission on the part of said inspectors of election at the said polling places to administer any lawful oath to any elector, Republican or Democrat, who claimed that he had duly registered, but whose name did not appear upon the registration books. He further denies that there was any unlawful refusal to receive the votes of persons who claimed that they had a right to vote, but whose names did not appear upon such lists. On the contrary, he alleges that all duly qualified voters who were registered according to law were allowed to vote by said inspectors of election.

11. He denies that there was any refusal, neglect, or omission "to have nothing in

the respective ballot-boxes at the opening of the respective polls," and further denies that they placed Democratic ballots therein, or that they refused to open and exhibit such ballot-boxes in public as required by law.

12. He denies that at such polling places the Democratic inspectors hindered or prevented any one from voting who was lawfully entitled to vote, and denies that they unlawfully permitted Democratic electors to vote tissue ballots and ballots known as "little jokers," whatever they may be. He further denies that any such votes were unlawfully or improperly canvassed or counted by such inspectors or that any unlawful or improper return of any such votes was made, contrary to the laws of Florida in such cases provided.

13. He denies that there was any refusal, failure, or omission upon the part of such inspectors of election to deliver to the representatives of the Republican party at the several voting places in the district a statement of the result of the election after due demand therefor. And if there was any such refusal the contestant did not suffer any injury or lose any votes thereby.

14. He denies that any Republican electors of said Congressional district were deprived of or prevented from the exercise of their suffrages by means of fraud or violations of the election law or by intimidation or menace. He further denies that his majority was obtained through fraud, intimidation, or menace, or through any action of Democratic inspectors at such election in stuffing ballot-boxes with Democratic ballots, in unlawfully voting, counting, or canvassing tissue ballots or little-joker ballots. He further denies that such majority was obtained by the action of the said inspectors in permitting Democratic electors to vote many ballots or upon other names than their own, or by keeping Republican voters from the polls through violence, or by preventing those who were at the polls from voting, as charged.

15. He further denies generally, as he has already done or attempted to do specifically, all allegations of irregularity, violation of law, fraud, intimidation, or menace against any Democratic officer or elector at any of election precincts or voting places in any of the counties in the said Congressional district at the said election, or previous thereto, as made by the contestant in his notice of contest, and denies all the statements in the several paragraphs of the said notice made to invalidate his election or traduce the number of votes received by him as Representative in Congress for said district at such election; and the contestee, having denied the facts alleged in the contestant's notice, sets forth the following other grounds upon which he rests the validity of his election.

16. That he received a majority of the legal votes cast at the said election for such Representative in the Forty-seventh Congress; that the official canvass of the said election, as made by the State canvassing board, and published according to law, showed that he received — votes and the contestant — votes, and this result was reached by a public canvass without objection or protest on the part of contestant.

17. That at the several voting precincts in the county of Escambia there was intimidation upon the part of the Republican party through its adherents, used and employed to force and compel colored citizens who were qualified electors to vote the Republican ticket, and for the contestant, and the vote of the contestant was largely increased in consequence thereof, to the amount of 100 votes or more.

18. That in Gadsden County, at the several precincts thereof, there was a similar conduct on the part of the Republican party and its adherents, as charged in paragraph 17, and by such intimidation the contestant's vote was largely increased, to the amount of two hundred votes or more.

19. That in Wakulla County, at the several precincts thereof, there was similar conduct on the part of the Republican party and its adherents, as charged in paragraph 17, and by such intimidation the contestant's vote was increased to the amount of twenty-five votes or more.

20. That in Leon County, at the several precincts thereof, there was similar conduct on the part of the Republican party and its adherents, as charged in paragraph 17, and by such intimidation the contestant's vote was increased to the amount of one hundred votes. And in such county the contestant's vote was further increased to the amount of two hundred and fifty votes by the votes of boys under the age of twenty-one years, persons convicted of felony and larceny, non-residents, and other disqualified persons, and by the votes of persons who were not duly registered, and of others who voted more than once, all of which said illegal or fraudulent votes were cast for the contestant.

21. That at precinct No. 2, in Leon County, in said district, known sometimes as Dawkin's Pond, a mistake was made by the precinct canvassers while making the canvass, or transcribing the result thereof, by which (127) one hundred and twenty-seven votes cast for the contestee were entered upon the return as having been cast for one Livingston W. Bethel, who was not a candidate for such Representative in the Forty-seventh Congress, and the said mistake entered into the result, and the county canvassers, and afterwards the State canvassing board, carried the said mistake into the official canvass, and the votes so returned for the said Bethel should be added to the

contestee's vote, and his vote and majority should be increased one hundred and twenty-seven votes by the correction of said mistake.

22. That in Levy County, at the several precincts thereof, there was similar conduct on the part of the Republican party and its adherents, as charged in paragraph 17, and by such intimidation the contestant's vote was increased to the amount of seventy-five votes.

23. That a system of intimidation was carried on by the supporters of the contestant in Jefferson County, in said district, at said election; that voters were threatened, and beaten, and abused because of their opposition to the contestant, and to compel them to vote for him as such Representative in the Forty-seventh Congress; that in violation of law the secrecy of the ballot was destroyed by the use of a transparent ballot, and an espionage placed over the voters as they were at the polls; that in some cases the colored people were compelled by the contestant's supporters to vote an open ticket in violation of law; that in Monticello a combination of the contestant's supporters exerted a system of intimidation upon the colored voters to compel them, whether willingly or not, to vote for the contestant, and this combination had its headquarters at the contestant's own residence; that at Waukeenah, Macedonia, and in fact at every precinct in the county a similar combination existed, and the contestant's vote was unlawfully increased thereby three hundred votes or more.

24. That in the said county of Jefferson a large number of persons at the several precincts, and at each and every of them, amounting to one hundred or more in all, voted for contestant who had no right under the laws of Florida to vote at the said election. These illegal voters were made up of non-registered persons, persons convicted of larceny and felony, persons illegally registered, minors, and other persons disqualified to vote under the laws of Florida, and their votes should be excluded from the result.

25. That at the said election at the several voting places and precincts in the several counties in the said district large numbers of fraudulent and illegal votes were cast for the contestant which should be excluded from the result. Marked and transparent ballots were illegally voted, and open ballots were illegally voted under a system of intimidation and espionage to compel colored people to vote for the contestant against their wishes, all of which should be excluded from the result. Other means of intimidation and espionage were used; threats, menaces, and violence were employed to compel electors to vote for the contestant against their will, and the contestant's vote was largely increased by these and other unlawful means and influences.

EXHIBIT C.

Replication and amended notice.

GEORGE W. WITHERSPOON }
vs.
ROBERT H. M. DAVIDSON. }

Contested election, 1st Florida district.

The contestant having seen and read the contestee's answer, and saving and reserving unto himself now and at all times hereafter any and all manner of exception or exceptions to the many untruths, imperfections, uncertainties, and insufficiencies thereof, and replying unto so much thereof as he is informed and believes that he is called upon to reply to, by way of amendment to his former notice of contest heretofore filed in this cause, the service whereof has been acknowledged by the contestee, and, replying, he says:

First. That he was the candidate of the Republican party in the first Congressional district of Florida for the office of Representative in Congress to the Forty-seventh Congress of the United States of America, and duly voted for by the competent electors of said district on the second day of November, A. D. 1880.

Second. That all and singular the charges or charge of fraud or frauds made against Democratic election officers, inspectors, and so forth, he, the contestant, as such Republican candidate, was injured thereby, making a result different to that which would have resulted from a fair election in said district. All of which charges have been specified to the contestee heretofore, and which the contestant now repeats.

Third. The contestant denies that the contestee's majority was decreased in any county of said district by reason of Republican intimidation or fraud, as charged in the contestee's answer; but avers that if anything at all occurred in this connection, it was the increase of the contestee's majority by Democratic frauds, violence, and intimidation, which frauds, violence, and intimidation resulted to the injury of the con-

testant to the amount of more than four thousand and five hundred votes in the said district.

Fourth. The contestant further denies that the contestee was in any manner damaged or injured by the reasons or causes set up in the said contestee's answer.

Fifth. The contestant, further replying, says that as to the county of Escambia the contestee was not injured or damaged by the action of any Republican, but, upon the contrary, the contestant by and through the action of Democratic election officers of election was defrauded and swindled out of more than five hundred votes, to his great injury and damage.

Sixth. That in the county of Jackson this contestant, as such Republican candidate, was defrauded and swindled out of more than one thousand votes by Democratic officers of election by means of intimidation, refusal to register, and registering Republican electors in precincts other than those in which they lived, to the great injury and damage of the contestant.

Eighth. That in the county of Gadsden the contestant, as such Republican candidate, was robbed, defrauded, and swindled out of more than eight hundred votes by means of Democratic frauds, violence, intimidations, and disregard for the sanctity of the law.

Ninth. That in the county of Leon this contestant, as such Republican candidate, was defrauded and swindled out of more than seven hundred votes through the action of Democratic officers of election in refusing registration, using tissue ballots, little jokers, and so forth, to the great injury and damage of the contestant.

Tenth. That in the county of Jefferson this contestant was defrauded and swindled out of more than fifteen hundred votes through the action of Democratic officers of election in refusing Republican electors the right to register, in using tissue ballots, little-joker ballots, and by other and various corrupt means and devices, to the great injury and damage of this contestant as such Republican candidate.

Eleventh. That in the county of Levy this contestant, as such Republican candidate, was defrauded of more than one hundred votes through the action of Democratic officers of elections in refusing registration, using tissue ballots, and indiscriminately challenging Republicans who were entitled to vote, to the great injury and damage of this contestant.

Twelfth. That in the counties of Taylor and Lafayette this contestant was defrauded and swindled out of more than two hundred votes by and through the action of Democratic officers of election in refusing registration, using tissue ballots, little-joker ballots, intimidations, and other and various corrupt means and devices, to the great injury and damage of this contestant.

Thirteenth. That in the county of Monroe this contestant, as such Republican candidate, was defrauded out of more than two hundred votes through the action of Democratic officers of election in refusing registration, using tissue ballots, little jokers, and challenging and delaying Republicans without cause, to the great injury and damage of this contestant.

That true it is the contestee says that no frauds or violence or intimidations were used, yet this contestant avers the fact to be that such were used in a reckless manner, and with no other view than to defeat the election of this contestant, which would have been the result had a free expression of the will of the people of the district been allowed; and the contestant having answered all and singular the objections of the contestee, he puts himself upon the country.

T. W. BREVARD,
J. D. THOMPSON,
Att'ys for Contestant.

The contestant will please take notice that we shall proceed to take testimony on Saturday, March 5th, 1881, at 10 o'clock a. m.

T. W. BREVARD.
J. D. THOMPSON.

HORATIO BISBEE, JR., vs. JESSE J. FINLEY
SECOND CONGRESSIONAL DISTRICT OF FLORIDA.

Contestant charges that many electors duly offered to vote for him and were illegally rejected; that votes were cast for contestee by persons of which should be rejected; that fraud and "ballot-box stuffing" were and false returns were made from certain polls; that the election in County was held without any registration in conformity to law; that the election at a certain poll was affected by the use of intoxicating violence, and disorderly conduct on the part of the political friend testee; and that what purports to be a return from Fort Christmas was signed by the officers of election, and should be rejected.

Contestee alleges that some of the persons who voted for contestant were by conviction of crime; and he objects to a portion of the testimony as being taken after the expiration of the first forty days allowed for that some of the rebuttal testimony was not strictly in rebuttal.

Held, That a vote offered by an elector, and illegally rejected, should be cast, it being shown by the affidavit of such elector that he offered it for whom.

That all votes cast by persons of foreign birth who failed to produce their naturalization papers, or papers declaring their intentions to become citizens by the constitution of Florida, are illegal and void, and must be disregarded in the count.

Where the evidence shows a return to be false and not a true statement of the votes cast, such return is impeached and destroyed as evidence, and the same may be proven by calling the electors whose names are on the poll-lists of such poll; and no votes not otherwise proven should be counted.

Where, as in this State, the constitution provides "that no person registered according to law shall be allowed to vote," an election is held without registration, the entire foundation for a legal election was destroyed, and such election must be set aside and the returns be rejected.

Where it clearly appears that the fairness, purity, or freedom of an election has been materially interfered with by acts of violence, intimation, or intimidation, the election should be set aside.

An unsigned paper purporting to be a return is void, and no votes stated therein should be counted.

The provisions of the statute in reference to the taking of testimony in this case are directory, constituting only convenient rules of practice; and the court is at liberty, in its discretion, to determine that the ends of justice require a different course.

APRIL 17, 1882.—Mr. RANNEY, from the Committee on Elections, submitted the following

R E P O R T:

The Committee on Elections, to whom was referred the contested case of Horatio Bisbee, jr., vs. Jesse J. Finley, from the Second Congressional district of Florida, having had the same under consideration, beg leave to submit the following report:

The testimony in this case is voluminous, making a record of

pages, exclusive of the briefs and arguments of the respective parties and their attorneys.

Under the laws of Florida the governor of the State appoints five county commissioners for each county, and the latter appoint three officers of election at each polling place. These officers elect their clerk, and the board of election officers thus constituted hold the election and certify the result thereof to the county judge and clerk of the circuit court, who are also appointed by the governor. The county judge and clerk of the circuit court, with the assistance of a justice of the peace, constitute a board of county canvassers, who canvass the returns of the election officers from the several polling places in the county and certify the result to the secretary of state and governor. The secretary of state, attorney-general of the State, and comptroller of State constitute a board of State canvassers, who canvass the county returns and certify the result thereof. It is not disputed that the entire machinery of the election was in the hands of the political friends of the sitting member. It is true the statute of the State provides that the county commissioners shall appoint the officers of election, so that, "if possible," they shall represent two political parties, but the evidence discloses that this provision of the statute was frequently disregarded, and at some polls contestant had no political friend upon the board of election officers. It is not deemed necessary to set forth the allegations of contestant in his notice of contest, nor those in the answer of contestee, but the substance of them will be stated on each branch of the case. The contestant avers and claims that many electors duly offered to vote for him, and their votes were illegally rejected, and insists that all such votes so tendered and refused shall be counted as if cast.

As a question of law we do not understand it to be controverted that a vote offered by an elector and illegally rejected should be counted as if cast. It was so held in the case of Niblack vs. Walls, Smith's Reports, page 104, reported by McCrary, who was then chairman of the Committee on Elections; again, in Bell vs. Snyder, Smith's Reports, 251, 252, and in Martin vs. Yates, Forty-sixth Congress. McCrary, in his work on contested elections, regards it as a settled principle (section 43), and your committee have so regarded it in this controversy.

In the appendix to this report, Exhibit A, will be found the name of every voter whose vote was tendered for contestant and rejected which we have allowed and counted for him, except a few votes in Madison County. This exhibit gives not only the name of the voter, but the page of the record where the testimony will be found establishing his right to vote and that his vote was tendered and rejected.

In the county of Marion, in which a large number of electors were deprived of the right to vote without any fault or neglect on their part, the electors in many instances, after being denied the right to vote, went before a United States commissioner and made an affidavit to the fact of their qualifications as electors and of their offering to vote, to which they attached the identical ballot which they tendered to the election officers. The figures in the column of Exhibit A headed affidavit refer to the pages of the record containing such affidavits. In the case of Bell vs. Snyder, Smith's Reports, pages 251, 252, such affidavits were considered sufficient evidence of the voters' intention to vote for the officers whose names were on the ballot attached to the affidavit, and on such evidence their votes were counted.

But contestant has not only put in evidence the affidavit of the voters with their ballots attached, but has in most instances taken the testimony of the voter whose vote was refused, and where the voter is not

called as a witness it is shown by the testimony of other witnesses, officers of the election and other persons at the polls, that his vote was tendered and refused.

Your committee find from the evidence that there should be added to contestant's vote 268 votes on the ground that they were tendered for him and illegally rejected, and should now be counted. It is urged by contestee that the votes of some of the persons named (Exhibit A) had been disfranchised by conviction of crime.

It appears to have been a rule with the election officers, not only in this but in other counties, to refuse to receive the vote of any person whose name was on a list—called by some of the witnesses a convicts' list—which had been prepared by the political associates of contestee and placed in the hands of the officer of election. It further appears that the votes of such persons on the said list were refused, without evidence of identity, and without the production of any record of conviction, at the polls.

We have excluded from our count the votes of all persons where the evidence is satisfactory that the person alleged to have been convicted is the same person whose vote was offered and refused, though the record of conviction is not in evidence, and to designate them have placed the letter C opposite their names on said exhibit.

We do not mean to be understood, however, as holding that the record of conviction in such cases should not be produced as the proper evidence of disqualification. The question is an immaterial one in this case.

It is urged on the part of contestant that the officers of the election at the polls of Mellonville, Orange County, and Live Oak, Suwanee County, connived at and were parties to a premeditated plan formed to suppress the full Republican vote, and for this reason the returns should be rejected. While it is true that the evidence may warrant the rejection of the returns at these polls, yet the committee have preferred to retain the returns in all cases where it could be done without doing violence to the settled principles of law, and to correct the returns by adding votes illegally rejected, and deduct those illegally cast, where there is evidence by which such correction can be made with reasonable certainty. We have therefore counted for contestant the votes tendered and refused, instead of rejecting the returns of these two polls.

Your committee also deduct twenty-one votes from contestee's vote on the ground that they were cast by persons not possessing the qualifications of voters. Their names and page of record containing the testimony relied on are given in Exhibit C of appendix, hereto attached.

FOREIGN-BORN ELECTORS.

Contestant in his notice of contest alleges that certain votes were cast for contestee by persons of foreign birth, and claims their rejection on the ground of their failure to produce before the officers of the election their naturalization papers or their declaration of intention to become citizens, as the constitution and the laws of Florida require.

The constitution of Florida reads as follows on this point:

Section 3, article 14 of the constitution of Florida reads as follows:

At an election at which a citizen or subject of any foreign country shall offer to vote, under the provisions of this constitution, he *shall present to the persons lawfully authorized to conduct and supervise such election* a duly sealed and certified copy of his declaration of intention, *otherwise he shall not be allowed to vote*; and any naturalized citizen offering to vote *shall produce before said persons lawfully authorized to conduct and supervise the election* the certificate of naturalization, or a duly sealed and certified copy thereof, *otherwise he shall not be allowed to vote*.

It will thus be observed that the constitution of Florida commands *each and every voter of this class to perform a certain act, "otherwise he shall not be allowed to vote,"* and this act peremptorily enjoined is the production of the evidence by the individual of his right to vote.

It is a fundamental principle as firmly established as any rule of law that votes must be cast as the law directs, and if the law requires the voter to produce certain specified evidence of that right before he can cast his vote, and he fails to produce that evidence, such vote, if cast, is illegal and void.

Questions identical with this in principle have been frequently decided by the House of Representatives and by the judicial tribunals of the country, some of which are here cited.

In Pennsylvania persons not assessed were required to answer certain questions under oath, as to age, residence, &c., and to prove their residence by the affidavit of a qualified voter, as the prerequisite evidence of their right to vote. It has been repeatedly decided by the courts of that State, as well as by the House of Representatives, that votes cast without the production of such evidence as the law requires are *presumed to be illegal votes.* (Maner vs. Cassidy, 1 Brewster R., p. 2; Myers vs. Moffett, 2 id., p. 230; Weaver vs. Given, 1 id., p. 141; Shepherd vs. Gibbons, 2 id., p. 117-129; Brightley's Law Cases, pp. 558, 572, 492, 493, notes; Myers vs. Moffett, 2 Bartlett R., pp. 564-567; Covode vs. Foster, id., 600, 637, 608.)

In the case of State vs. Hilmontel, 21 Wis. R. (574 to 578), a question identical in principle with the one now under discussion was ably and elaborately considered. The statute of Wisconsin provided that no person whose name was not upon the registration list should vote unless he produced his own affidavit and that of a householder stating his residence and qualifications as a voter.

The court *unanimously* held, after a second argument by able lawyers, that a vote cast by a person not registered, without furnishing the affidavits required by the statutes, was illegal and void, and that in a contest such votes cannot be made legal by proof that the persons who cast them could have furnished such affidavits if they had been challenged, or otherwise required to do so. In that case it was conceded that the persons, some 600 in number, who cast the votes in question had all the qualifications of electors, but that the "burden is on him (the voter) to furnish the affidavit;" that he was the agent to execute the law, and that without such affidavit his vote cannot be counted, though in every other respect he was a legal voter.

This case, decided by the supreme court of Wisconsin, declares a principle which disposes of the question raised in this contest. Here the constitution of the State makes every voter of this class an agent to execute it, and places the burden upon him to furnish the prerequisite evidence of his right to vote. The constitution does not say that he shall be required to produce his naturalization papers only when his vote is challenged. By that instrument he is informed and challenged in advance of the election itself, and he must approach the polls armed with such evidence as the supreme law commands him to produce as a condition precedent of his right to exercise the franchise of an elector. Our attention has not been directed to any judicial authority in conflict with the authorities cited. On the other hand, we find the principle to have been uniformly applied, and we are therefore of the opinion that it should be applied to this case.

The principle must likewise be maintained that the production of this evidence at the trial will not change the legal status of the voter, and

thus make these votes in question legal votes. Such a decision would be at variance with a well-established principle of law which forbids the making of an act valid at a subsequent period which at the time of its commission was void because prohibited by law.

Votes illegal when received cannot be made legal by evidence offered at the trial which should have been produced before the vote was cast. (*Shepperd vs. Gibbons*, 2 Brewster, p. 129; *Meyers vs. Moffet*, 1 *id.*, p. 230.) The principle is again established in the following :

If election officers receive a vote without preliminary proof which the law makes an essential prerequisite to its reception, such vote is as much an illegal one as if the voter had none of the qualifications required by law. (Brightley's Law Cases, 453-492, notes; also, 21st Wisconsin, 566; 23d Wisconsin, 630; 16th Michigan, 342.)

The principle is self-evident. Voting is a single *act* commanded to be performed within a particular time, on a particular day, and in conformity with law ; there cannot, therefore, be a valid performance of the requirements of the law at a period subsequent to the day on which alone the law commanded the act to be performed. The question at issue is not whether such evidence as required by law to establish their right to vote could have been furnished, but whether such evidence was furnished. If they did not produce it, the supreme law prohibited their voting, and an act prohibited by law cannot be valid.

The committee being of the opinion that all votes cast by persons of foreign birth who failed to produce their naturalization papers, or papers declaring their intention to become citizens, as required by the constitution of Florida, are illegal and void. We proceed to state the number of such votes which from the testimony should be deducted from the count.

The evidence introduced and to be relied upon is, first, the testimony of the voter himself that he did so vote without producing such evidence of his right to vote ; secondly, his own admission, under oath, that he voted for contestee ; and, thirdly, where the voter refuses to testify for whom he voted when called and sworn by the contestant, the testimony of other witnesses that he adhered to and supported the principles of the Democratic party and was a Democrat. This is a well-settled principle : "When a voter refuses to testify for whom he voted, it is competent to resort to circumstantial evidence, such as that he was an active member of a particular political party." (McCrary, sec. 293.)

We find from the evidence that 74 votes should be deducted from contestee's vote on the ground that they were cast by persons of this class. Their names, and page of the record containing the testimony relied on, are given in Exhibit B of the appendix.

ALACHUA COUNTY.

In this county contestant charges fraud and "ballot-box stuffing" at several polls, and has adduced testimony as to three polls to sustain such charges.

Arredonda poll.

The charge touching this poll is in substance that the election officers corruptly made a false return of the votes cast. Under the laws of Florida each county is divided into election districts, and no elector can vote in any district other than that in which he resides.

The total vote returned from this poll was in 1878 322, the highest Republican vote for any candidate being 256 and the highest Democratic vote for any candidate being 66.

In 1880 the total vote returned from this poll for Presidential electors was 322 (exactly the total vote returned in 1878), of which 172 were returned for the Democratic electors and 150 for the Republican electors; for Representative in Congress the total vote returned in 1880 was 241 (81 less than for Presidential electors), of which 172 were returned for contestee and 69 for contestant; and for the legislative ticket the total vote returned was 328, of which 172 were for the Democratic candidates and 156 for the Republican candidates; according to the returns, the Democratic vote had increased from 66 in 1878 to 172 in 1880, and the Republican vote correspondingly diminished. Your committee are convinced from the evidence that the return of the votes from this poll is flagrantly false, and is not a true statement of the votes as they were cast at the election in question.

The return is impeached and destroyed as evidence by the testimony of the electors themselves. Contestant has called and sworn as witnesses 259 voters, each of whom testify unreservedly that he voted for contestant, and it is established by other evidence that another elector, deceased before the testimony was taken, voted for contestant, making 260 votes cast for him at this poll, instead of 69 given him by the returns.

The testimony of these electors will be found in the record, pp. 68 to 218, inclusive. Their names are on the poll-list made and returned by the election officers (all of whom were the partisan friends of the sitting member but one, who was under the influence of liquor on election day); and it cannot therefore be disputed that the 260 shown to have voted for contestant were legal electors, nor have your committee any doubt they voted for contestant.

As to the testimony of some of these voters, the criticism is made that they could not remember the names of all the candidates, State and national, for whom they voted.

We do not consider it remarkable that five months after the election an elector could not name all the candidates he voted for out of a dozen or more on his ballot, while he would be likely to remember the name of his candidate for Congress who had been his candidate for Congress for three elections in succession.

Any considerable number of voters proven for one candidate in excess of the number returned for him has always been regarded as evidence of fraud and a legitimate method of impeaching the return. Here it is established that 191 more votes were actually cast for contestant than were returned for him. We think it is sufficient to exclude the return from the count, without further evidence.

One provision of the statute is that "the ballot-box shall not be concealed from the public," and section 21 (of pamphlet compilation furnished the committee at the argument of the case) reads as follows: "As soon as the polls of an election shall be finally closed the inspectors shall proceed to canvass the votes cast at such election, and the *canvass shall be public and continued without adjournment until completed.*"

Your committee find from the evidence that these provisions of the statute were violated, and without any reason being assigned for so doing.

Both the witnesses for contestant and contestee testify that after the polls were closed the officers of the election took the ballot-box away, from the polling-room to a house in which they took supper, two or three hundred yards distant from the building in which the election was held,

and the ballot-box was carried inside of the supper-house. Upon this point there is no conflict whatever in the testimony.

One of the election officers, Flewellen, a political friend of contestee testifies that they had the election laws with them. The language of this witness upon this subject is as follows: "We tried in every respect to go by the election laws. *We had them with us, and complied with them as well as we knew how.*" (Record, 384.)

The language of this statute is so plain that any person of ordinary intelligence could not fail to understand its meaning, and we are constrained to say that either this election officer, Flewellen, was too ignorant to read a few plain sentences of the law, or has testified with reckless disregard for the truth.

But he cannot escape condemnation on the ground of being ignorant for it sufficiently appears that he possessed intelligence and was the ruling spirit in the board of election officers.

The testimony establishes that the adjournment for supper was not a careless or ignorant act, but that this officer, who swears he had the election laws with him, had ordered supper before, the closing of the polls, for all the election officers and the United States supervisors (Testimony of Ed. Sammons, United States supervisor, Record, page 194).

It is also proven that this same officer, Flewellen, had in his possession the key of the ballot-box (testimony of George, inspector, Rec., 39; testimony of J. T. Walls, Rec., 188), and for a portion of the time, when they were in the supper-house, he also had possession of the ballot-box (testimony of Sammons, Rec., 194).

There is not any testimony adduced contradicting the fact that he had the key of the box about the middle of the day and at the time he went to the supper-house, and he admits in his own testimony that he had the possession of the ballot-box while in the supper-house. He says:

After the Democratic inspectors got through eating I went with the Republican inspector into another room, where his supper was served; there he gave me the ballot box, and I held it immediately in his presence until he got through eating, and then I gave the box back to him.

This officer here tries to shield himself from the charge of tampering with the box, and to produce the impression that he could not have tampered with it without being observed by the Republican inspector. But we think it wholly incredible that the officer Flewellen so held the box under the eyes of the other officer during the entire time he was eating supper that he could not have tampered with it without being discovered. Besides, one witness, Ransom Baskins, who swore he voted a Democratic ballot (Record, p. 200), testifies that the officers of the election used whisky freely; that they drank one bottle and one flask of liquor; and with regard to this officer, Virgil George, he says, "I saw him drinking, and at times with his eyes shut and his head nodding." This officer was chosen by the other two inspectors, in a manner not authorized by law, in the place of his son, Ephraim George, appointed by the county commissioners, against the protest of a Republican committeeman, on the ground that he was a Democrat, and under the law the Republicans were entitled to one of the election officers (Record, p. 217).

Contestee's witness proves that Ephraim was a disreputable man (Record, 380, 381), and had not been in the county for some time prior to the election, and not being present when the polls opened, Virgil, his father, was elected in his stead by the other officers, when, according to law, the election should have been by the voters present at the polls.

It was proven by one of its election officers that George left the polling-room several times during the day of the election. (Record, 390.)

The manner in which he was elected being considered, his making no opposition to adjournment after the polls closed, which the law prohibited, nor to Flewellen having the ballot-box and the key thereof at the same time, which the law also prohibited; that he drank liquor to excess, from the effects of which he was partially asleep at times, it is evident that he was blind to much that transpired, and was unfaithful to his trust and the duties of his office.

The law only authorized an adjournment for dinner between the hours of 12 m. and 1 o'clock p. m. for thirty minutes, and commanded that during such adjournment "the ballot-box shall be sealed and kept in possession of an inspector, who shall not have the key thereof."

It is established by the evidence that the election officers remained in the polling-room after the polls were declared closed *until it was dark*, with the shutters of the polling windows so nearly closed as to obstruct observation from the outside, during which time they did not commence the canvass of the votes; that after it was closed Flewellen, having the ballot-box in his possession, and the key too, which the law prohibited, announced that he had had supper prepared for the officers, whereupon they adjourned to the supper-house, and in the supper-house this officer, Flewellen, again has possession of box and key. These officers excluded from the polling-room the Republican watchers, who under the law had the right to be present and witness the canvass, and to have a copy of the result of the election. The public view of the ballot-box was also obstructed during the day by the construction of a narrow passage-way of boards extending back from the polling window some sixteen feet, through which the voters approached the polls. (Record, p. 187.)

There was a small vote comparatively to be polled, and such a contrivance was wholly unnecessary from any apprehension that any elector would lose his vote by the voters crowding around the polls.

The oath of office prescribed for the officers of election in Florida to be taken previous to receiving any votes is "*that they will perform the duties of clerk or inspector of election according to law, and will endeavor to prevent all fraud, deceit, or abuse, in conducting the same.*"

There is no room for doubt that these officers of the election violated their official oath and the penal statute of the State and shamefully disregarded their duties which they had sworn to perform.

Having deliberately done this, we do not think any testimony given by them in this case uncorroborated by other evidence is entitled to much weight.

Your committee find no reason assigned in the testimony for the several violations of mandatory provision of the statute under which the election was held, and the conclusion is irresistible that the adjournment for supper and the removal of the ballot from the polling-room was a preconcerted act, and for a corrupt purpose.

The total number of votes cast were according to the returns but 328 (Record, 245), though there are 334 names on the poll-list (Record, 244), and to canvass this number of ballots was not a work requiring much time, and certainly does not furnish any excuse for an adjournment before the canvass was made, which the law expressly prohibited.

Without any further statement of the evidence touching the action of the election officers on this branch of the case, your committee are of opinion that the disregard of the mandatory provisions of the election laws was willful and with a dishonest purpose of securing an oppor-

tunity to commit fraud, which such laws were intended to prevent, and that the conduct of these officers was such as to render their acts unworthy of credit and to entirely destroy the *prima facie* character of their return as evidence of the result of the election at this poll.

For this reason, as well as for the reason that the return is impeached and destroyed by the testimony of the electors, your committee have excluded this return from the count. The testimony with regard to this poll taken in behalf of the sitting member will be found in the Record, pp. 378 to 394, inclusive, and the testimony in behalf of contestant other than that of the voters from pp. 186 to 196.

The precedents for excluding a return in such a case as this are numerous, and the principles of law which we have followed are well settled. We refer, however, to McCrary on Elections, sec. 302, 303; Brightley's Leading Cases, p. 493; 1st Brewster's Reports, pp. 66, 107; Washburn *vs.* Voorhies (2d Bartlett, 54); Reed *vs.* Julian (2d Bartlett, 822); Finley *vs.* Walls (Smith).

The sitting member took the testimony of the clerk of the circuit court of this county, to whom the ballot-boxes were delivered after the election.

This clerk, nearly six months after the election, produces the box, opens it, examines the ballots in it, and testified that there were in the box 85 Republican ballots, counting no name for member of Congress; that there were but 68 ballots for contestant, though the return gives him 69; 148 ballots for Republican Presidential electors, whereas, the return gives them 150; and that there were but 140 ballots for Republican candidate for governor, though the return gives him 143. (Record, p. 399.)

It is claimed that these ballots in the box are better evidence of the result than the testimony of the voters.

As to the testimony of this clerk, it is sufficient to say that there is no law in Florida providing for the preservation of the ballots for the purpose of being used as evidence; the ballots are not evidence sufficient to overcome the testimony of the voters where the question of fraud and tampering with the ballot-box is raised. (McCrary on Elections, sec. 276; *id.* 439; Washburn *vs.* Voorhies, 2d Bartlett, 54.)

McCrary says in "such a case the ballots might sustain the fraud." (McCrary, sec. 439; also Reed *vs.* Julian, 2 Balt., 822.)

These ballots cannot be entitled to much weight as evidence of the result of the election, where it has been shown that the acts and conduct of the election officers are unworthy of credit and their returns set aside and regarded as unreliable. Having created for themselves, in violation of law and their official oaths, opportunities for tampering with the box, it is legitimate to infer that they would endeavor to put ballots in the box that would support the return.

But it will be seen that, comparing the votes returned with those in the box at the time the testimony was taken, that the return gives contestant *one* more vote than there was in the box, the Republican Presidential electors *two* more, and the Republican candidate for governor *three* more.

This small discrepancy we think is significant. It is hardly possible that election officers, proceeding in the orderly discharge of their duties, could make the mistake of returning *more votes* for the candidates of their opponents than there were ballots cast for them, and this discrepancy induces the belief that, in placing ballots in the box for the purpose of having the number thereof the same as the number of votes

given in the false return which they made, they committed an error in their count.

The sitting member has urged that the contestant's vote was reduced at this poll by the voting of a ballot not containing the name of any candidate for Congress. For convenience we will distinguish this from the other ballots by designating it as a bogus ballot.

Your committee do not find any evidence to sustain this claim of contestee.

The proof is that the Republicans in this county were divided into factions, and run two distinct tickets for the State legislature. These factions were known as the Walls and Dennis factions, the former being a candidate for the Senate on one ticket, and Dennis for the assembly on the other. The specific claim and theory of contestee is, that at this poll the Dennis faction voted a ticket blank as to the office of Representative in Congress. The only evidence of such bogus tickets being voted is that they were found in the box. But we have already shown that on an issue of this kind, where the officers are charged with fraud, the ballots are not sufficient evidence to outweigh the testimony of the voter.

Contestee has not attempted to prove by direct evidence that a single elector voted such a ballot. He has not attempted to prove that any one at the polls on the day of the election attempted to induce any voter to vote such a ballot. On the other hand, contestant has proven by Walls, who resides in this election district, that he did not see any one canvassing against or opposing contestant on election day; and by Charles Dubose, an ardent supporter of the Dennis faction, that he distributed the tickets of this faction, and that contestant's name was on them. Dubose was chairman of a club, having 164 members, a list of the names of which is put in evidence. (Record, pp. 191, 196, 284.)

The testimony of the 259 voters sworn as witnesses for contestant establishes the fact that 260 electors voted for contestant, and that Walls and Dubose distributed the greater part of the Republican ballots at the polls; and this, in the absence of any evidence showing that these bogus tickets were actually voted, is conclusive that these ballots were fraudulently put in the box.

There is some evidence that Dennis, a candidate for the legislature, professed at times to be opposed to contestant's election (Record, p. 141), and there is also some evidence that such opposition, if any made, had been withdrawn before the election. (Record, p. 988.) As before stated, the testimony of the voters, as against any evidence adduced, is conclusive on this point, but the returns from the polls unassailed proves beyond controversy that the contest between the two Republican factions had no effect upon contestee's vote. There were in this county seventeen polling places; at three of these polls fraud is alleged and proven by the testimony of the voters, and at the other fourteen polls the returns give the contestant about the same number of votes as both Republican local tickets received, and in some of the election districts adjoining, and in close proximity to this election district of Arredonda, the contestant's vote exceeds the combined vote received by both of the Republican legislative tickets. We regard this as conclusive evidence that all the Republicans voted for contestant as solidly as if they had united on one legislative ticket.

Again, it is not clearly shown who had these bogus tickets printed; if done by contestee's associates, he could easily have shown it. Nor would the voting such bogus tickets have increased the number of votes for the sitting member; whereas he and all the Democratic candidates

have on the returns 172 votes, as against 66 votes two years previous, a gain of about one hundred and seventy per cent., without explanation and besides shown to be fraudulent by the testimony of the electors themselves. This disposes of all questions as to this poll, and your committee decide that the contestant is entitled to have 260 votes counted for him at this poll, or 191 in addition to his returned vote; and as contestee has not proven any votes for himself, none can be counted for him.

NEWNONSVILLE POLL.

The charge is made that fraud was committed at this poll by stuffing the ballot-box with Democratic ballots. Two hundred and ninety-six votes were returned, 150 for Bisbee, and 146 for Finley. (Record, p. 19.)

By the electors called and sworn as witnesses it is proven that 168 votes were cast for contestant; 18 in excess of the number returned (Record, pp. 23 to 65, and pp. 296 to 313.)

It is also clearly proven that when the polls closed there were 29 more ballots in the box than names of electors on the poll-list, which excess was drawn out and destroyed (Record pp. 31, 182, 185); that Democratic ballots were found in the box folded together, which were counted before the ballots were counted a Democratic officer stirred or mixed the ballots up with his hand (Record, p. 183); and, after drawing out and destroying 21 ballots, on a second count, 8 more in excess of the poll list was discovered, which were drawn out by the Republican inspector.

It is proven that 5 of the 8 so destroyed were Republican ballots, and that the greater portion of the other 21 were also Republican ballots. We conclude from the evidence that this excess was caused by the voting of two or more ballots by one voter, and that this was done by the supporters of contestee. Rollins testifies that he was in the polling room and kept a tally-sheet, and from the appearance of the ballots and the known fact that 175 Republicans voted (of whom one did not vote for member of Congress, Record, p. 43), and that the most of the ballots destroyed were Republican, that 174 votes were cast for contestant. There were 150 votes returned for contestant; five of the eight last destroyed being Republican, on the theory that illegal Democratic ballots took their place, would make 10 more votes for contestant in the final result; and on the same theory if 7 of the other 21 votes destroyed were Republican it would make 14 more votes, and in all 174, which Rollins testifies to. There would still be 121 votes to be accounted for to equal the number of voters on the poll-list.

On the part of contestant it is insisted that the return should be rejected, and only the votes otherwise proven counted. And our attention is called to the case of Washburn vs. Voorhies (2d Bartlett's Reports, p. 54), where returns were rejected on proof of an excess of votes proven for one candidate over his returned votes of about *eight* per cent. and at one poll of *four* per cent. of the total vote returned.

McCravy says (sec. 371), "it is very clear that if the returns are set aside no votes not otherwise proven can be counted." The supreme court of New York, in 7 Lansing, 274, and other authorities have declared and applied this as a settled principle, which we do not propose to overrule.

Another well-settled principle is that no poll shall be entirely set aside if the return can be corrected with reasonable certainty. The only correction of the return which, from the evidence, could possibly be made would be to count 174 votes for contestant and 121 votes for contestee. While we think this would approximate the probable true

state of the vote at this poll we cannot say from the evidence that such a result is reliably proven. The only other disposition that can be made of this poll is the rejection of the returns and count no votes save the 168 proven for contestant, and from the views we have taken of the whole case it is not material to the final result which alternative is adopted.

PARKER'S STORE POLL.

This poll is also assailed by contestant, who avers that the return is a false statement of the votes cast.

There were but 306 votes returned for Representative in Congress—151 for Bisbee, and 155 for Finley. (Record, p. 262.) There are 336 names on the poll-list. (Record, p. 374.)

It is satisfactorily proven by the electors sworn as witnesses for contestant that 179 votes were cast for him instead of 151 returned, an excess of 28 votes. (Record, pp. 323 to 371). There were ballots in the box at the close of the election in excess of the poll-list to the number of six or seven (Record, p. 355), and five votes tendered by Republicans and rejected, which are included in Exhibit A of the appendix.

This excess of 28 votes proven for contestant over the number returned for him is not explained in any manner by the testimony. Whether it is the result of fraud in the officers of election or of gross carelessness in the count there is no proof to show, but upon the testimony adduced it must have been one or the other. In counting so small a number of votes it is wholly improbable that the election officers innocently made the mistake of suppressing 28 votes for contestant—nearly one-sixth of the total vote cast for him. Contestee has not taken any testimony with respect to this poll, and we are required to dispose of this question upon the evidence in the record.

There is no evidence by which the return can be corrected. The return is proven to be unreliable as evidence of the true vote, and the latter cannot be ascertained by any other evidence.

We think, therefore, that this return should be set aside and that no votes not otherwise proven should be counted.

It may be claimed that it would be proper to credit contestee with the difference between the returned total vote and the number proven for contestee, but this would be an assumption without evidence and an evasion of the rule that when a return is rejected each candidate must prove his vote by other evidence.

If legal votes were cast for contestee he had an opportunity to prove them, but has neglected to do so.

MADISON COUNTY.

In this county the committee find from the evidence that a systematic scheme of stuffing the ballot-boxes at all of the Republican polls with Democratic ballots was adopted by the political opponents of the contestant, thereby creating an excess of ballots over the poll-lists, and that at the subsequent canvass the officers of the election drew from the ballot-box and destroyed Republican ballots to the extent of such excess, and that by this method the contestant's majority in this county was reduced several hundreds of votes.

They further find that the contestant attempted, in accordance with a settled principle of law, to call as witnesses all the known Republican electors at the several Republican polls where this ballot-box stuffing

occurred for the purpose of establishing his true and lawful vote by proving by their own testimony that they voted for him. For this purpose contestant's attorney, accompanied by a proper officer, proceeded to this county to take the necessary depositions. On the day succeeding their arrival, as disclosed by the evidence, an altercation occurred between a witness whose testimony had been given the day preceding in behalf of the contestant and one Patterson, who had been accused of election frauds, which altercation resulted in the death of Patterson in the presence of the officers engaged in taking the testimony.

This act occasioned the immediate suspension of taking the testimony in this county. Great excitement ensued, and the State militia were called out to aid in preserving the peace. So violent were these proceedings that the contestant's attorney and the officer engaged in taking the testimony were compelled to seek safety by flight, and this officer was afterwards arrested and imprisoned for several weeks, and finally discharged by the order of the supreme court of the State. For about a month contestant's attorney was prostrated by so serious an illness, resulting from exposure and fatigue, as well nigh proved fatal preventing all attention to business.

At the request of the Department of Justice, the United States judge in Florida and the marshal of that State proceeded to this county to take the testimony for the contestant, but were compelled to abandon the effort, as it was found to be impracticable in the then existing state of public excitement. Many witnesses who had testified before the United States court at Jacksonville, in the previous month of December, exposing the frauds in this county, became so alarmed by threat of violence of political opponents—one of their number, indeed, having been in the mean time shot and severely wounded—would not return to their homes.

As soon as contestant's attorney, who had the general charge of his case, recovered sufficiently to attend to business, he endeavored to secure the services of other attorneys politically friendly to the contestant to take this testimony, but without success, as they peremptorily declined to go into this county and others into which the excitement had extended.

At this juncture of affairs, contestant, then sitting as a member of the Forty-sixth Congress, employed an attorney residing in Washington D. C., to represent him in taking the depositions, in Jacksonville, of the witnesses who were refugees from Madison County, and to proceed thence to Alachua County to take the testimony there.

The committee are of the opinion that the foregoing evidence satisfactorily demonstrates the causes which prevented the contestant from establishing his vote at the polls in the county of Madison, tainted with fraud by the testimony of the voters themselves. To detail at length all the occurrences in this county as disclosed by the evidence would enlarge the report beyond proper limits, and therefore the statement will be condensed as much as possible.

It is in evidence that the Democratic ballots voted in this county were not more than half the size of and of finer quality of paper than the Republican ballots, and could be readily distinguished from the latter by even the sense of touch. This fact is established by the testimony of the witnesses of both contestant and contestee, and by specimens of ballots in evidence, and it is unnecessary to further allude to the evidence on this point. Likewise, upon the question of an excess of ballots and of two or more having been folded so that one would be partially inclosed in another, and in such manner as when handled or shakei

they would separate, there is no disagreement between the witnesses of the contestant and contestee.

The testimony of Carroway Smith, an election officer at poll No. 1, Madison County, a political friend of contestee, reads as follows upon this point :

At the closing of the poll at the time required by law, which time was sundown-we obtained lights and proceeded to canvass the vote by first ascertaining how many votes have been cast from the poll-list; one of the inspectors counted the ballots in the box which were in excess of the number of votes cast as shown by the poll-list; they were counted rather hurriedly, as I thought, and not wishing to have any mistake, I then counted them, examining every ticket carefully and found out that there was an excess, I think about fifty votes; I counted them over a third time, with the assistance of Mr. Forrester, Mr. Gambier being there, standing by the box, and found that my second count was correct. What I mean by examining every ticket carefully, that after counting a few votes, we found a ticket laying in another, and it was unanimously decided by the inspectors that it was not a double ticket, Mr. Gambier giving his opinion first; I found a good many in the same way, which accounts for the difference in the excess of the first and second counts, the first excess being about between twenty and twenty-five. We then proceeded to draw out said excess. Mr. Forrester, with his back to the box, did the drawing, and placed the drawn ballots in my hat, held by me for that purpose. After drawing out said excess, I took them to the middle of the room without examination, placed them upon the floor, and some one of us, Mr. Blackwell, I think, the United States supervisor, set them on fire; we then proceeded to ascertain for whom the remaining votes were cast in the manner required by law. (Record, p. 1017.)

The committee find that the sitting member did not examine any witnesses with regard to any of the polls in this county except polls Nos. 1 and 2 in the town of Madison, and that his witnesses support the testimony adduced by contestant concerning difference in ballots, excess over poll-lists, and the folding together of the same; that the contestee did not interrogate any of his witnesses as to the character of ballots drawn out and destroyed, whether they were Democratic or Republican; and as it was a very material thing to be established, the inference to be drawn is, that the contestee's attorney was aware of the fact that in the main they were Republican ballots, and that the testimony on behalf of contestant, taken before contestee examined his witnesses, establishes the fact that they were Republican ballots thus drawn out and destroyed. From this evidence the committee concludes that the following Republican ballots were drawn from the ballot-boxes and destroyed, to wit: At the Greenville poll, 52; at the Madison poll No. 1, 52; at Madison poll No. 2, 14 votes, and that 20 more in excess on the second count were counted, which added that number illegally to contestee's vote; at Cherry Lake poll, 14 votes, and at Moseley Hall, No. 4 poll, not less than 10 votes.

The committee are therefore of the opinion that the fraud thus committed at the five polls last mentioned should be corrected by adding 142 votes to the contestant's vote, and deducting 162 votes from contestee's vote. By thus correcting and purging the polls in question the contestant's majority at the five polls will be increased 304 votes.

The evidence likewise establishes the fact that not less than *eight Republican electors*, duly registered, offered to vote at the Greenville poll, and declared their willingness to take the oath of a challenged voter, but were denied the right to vote. (Testimony of McKay, Record, p. 929. Testimony of Stripling, Record, p. 943.)

It is also proven that at the Cherry Lake poll two Republican electors were illegally denied the right to vote (Record, pp. 914 and 921), and that one illegal Democratic ballot was cast at this poll, the person casting it not taking the oath of a challenged voter, though challenged as a minor. (Record, pp. 915-922.)

It is further established by the testimony of Watt S. Gheater, United States deputy marshal, that 13 Republican electors were illegally denied the right to vote a Republican ballot at the Mosely Hall poll No. 4 (Record, pp. 940, 941), and his testimony remains unassailed by any other testimony. There were ten polling places in this county, from all of which returns were made by the officers of the election, and certified copies thereof are in evidence (Record, pp. 869 to 885). From these 10 returns, duly signed by the officers of the election, it appears that 1,380 votes were returned for Finley and 1,488 votes for Bisbee, or a majority for contestant of 108 votes.

The official county return (Record, p. 860) gives Finley 1,055 votes and Bisbee 1,014 votes, or a majority for Finley of 41 votes instead of 108 majority for Bisbee on the face of the ten district returns. This discrepancy arises from the fact that the votes returned from the two polls known as Madison No. 2 and Cherry Lake are not included in the county returns. From these two polls 325 votes were returned for Finley and 474 votes for Bisbee (Record, pp. 871, 881), which added to the votes of the respective parties in the county return make the exact number of votes given for Finley and Bisbee in the ten district returns in the county. The committee are of the opinion that the omitted returns from Madison No. 2 and Cherry Lake polls, being unassailed, should be counted.

| | Finley. | Bisbee. |
|--|---------|---------|
| The vote there, as officially returned by the election officers, is..... | 1,380 | 1,488 |
| Deduct 162 from Finley for excess taken out and destroyed..... | 162 | ..... |
| And add 142 to Bisbee for same..... | ..... | 142 |
| Also, add 23 tendered and refused for contestant, and deduct 1 illegal vote from contestee..... | 1 | 23 |
| | <hr/> | <hr/> |
| | 1,217 | 1,653 |

Majority for Bisbee of 436, instead of 108 as returned.

If there were any doubt of the correctness of the foregoing conclusion the committee find other evidence of a positive, confirmatory character, calculated to produce the conviction that the contestant's majority in this county was even larger than 436.

Without pausing to dwell upon the testimony relating to the returns from the Republican poll known as Hamburg, which in the recent election gave the contestant but 64 majority, while at the election in 1878 it gave him 112 majority—the total vote cast in 1880 being greater by 24 votes than in 1878, and the names of 278 known Republican electors on the poll-list, in a total number of 447 (Record, p. 1176)—thereby increasing his majority in this county to 481, we pass to the brief consideration of another point in confirmation of the foregoing conclusions.

The history of the politics of Madison County shows that the Republican majority for Representative in Congress for the three elections prior to 1880 was as follows, to wit:

| | Votes. |
|--------------------------------------|--------|
| In 1874 Republican majority was..... | 469 |
| In 1876 Republican majority was..... | 439 |
| In 1878 Republican majority was..... | 453 |
| General average majority was..... | 453 |

The excess of the total vote of the county over that of 1876, when the Democratic candidates polled the largest vote that party ever received, is 245, and the testimony establishes the fact that this excess was the result of natural increase, and the greater portion of it was polled in Republican districts. (Testimony of Dennis Eagan, Record, p. 1203.) Should this excess be distributed *pro rata*, according to the vote of 1876,

when the parties to this controversy were candidates, the contestant's majority would be about 480 votes.

Again, it is in evidence that in this county, as generally throughout the State, a separate election was held by the Democratic electors to nominate ten county officers for appointment by the Democratic candidate for governor in case he was elected. This election was held, not in pursuance of any law of the State, as under the State constitution county officers are appointed by the governor, but under the following resolution of the Democratic State Convention :

Resolved, That this convention recommend the appointment of such county officers as may be chosen and elected by the conservative Democratic voters assembled in their several counties on the day of the general election; such election to be by ballot and to be conducted in such a manner as to obtain a full and free expression of the wishes of the voters who act with us in supporting the nominees of this convention.

The Democratic State or Congressional committee had the management of this separate election and issued the following instructions, to wit:

All persons who desire to vote for county officers must *show their ticket to the precinct committees before they vote*. No person who votes for Conover, Ledwith, or Bisbee can vote for county officers. (Record, p. 1058.)

This separate election, we infer, was to remove in some degree the objections to the exercise by the governor of such large appointing power, and the rivalry among so many candidates would assuredly bring to the polls the full vote of the party.

The evidence shows that the total Democratic vote cast at this informal election was 1,175, and that the highest Democratic vote ever before cast in this county was 1,082, in the year 1876, *which was 93 less than cast at these separate polls in 1880, at which no Republican vote was permitted to be cast*. Concede that 1,175 votes is the full Democratic vote of the county, and the following result appears, to wit : The entire number of names of electors on all the poll-lists in 1880 was 2,848. Deduct as full vote of contestee, 1,175; vote for contestant would then be 1,673; contestant's majority, 498.

On this branch of the case reference is made to the testimony of Eagan (Record, p. 1203). Nevertheless, the committee, with a view of removing all doubt, concluded to count only for the contestant the foregoing majority of 436, the number which the evidence conclusively establishes the contestant entitled to beyond cavil or dispute.

Correcting the vote, according to our conclusion, upon the issue already decided, the contestant's election is apparent, even conceding that all the votes at the Newnansville poll and Parker's Store poll, Alachua County, not proven for him *aliunde* the return, should be counted for contestee.

In other words, correcting the frauds by counting the votes as they were cast, in Alachua and Madison Counties; adding votes for contestant tendered for him and illegally refused, and deducting illegal votes cast for contestee, the election of contestant is established, as will appear in the tabular statements at the close of our report.

Other questions have been presented by contestant, which we will now state and dispose of.

BREVARD COUNTY.

The laws of Florida require a registration of the electors, and the constitution of that State commands "that no person not duly registered according to law shall be allowed to vote."

The law requires one general registration book for each county, and also another registration book for each election district into which the county is divided; and these district books are the original books of registration, in which each voter must write his name, or have it written by the registering officers, and take the oath of allegiance to the State and to the United States, which oath is to be printed or written at the commencement of the book. Opposite the voter's name must appear, in proper order, the number of the election district in which the voter resides, and the day, month, and year of his registration.

The law provides for copying by the clerk of the circuit court the names on the district books into the general registration book. This clerk is the registering officer for the election district in which his office is located, and he appoints a registering officer for each of the election districts of the county.

The registration must be closed ten days before the day of election, and a certified copy of the district book is to be delivered by the sheriff to the election officers, which copy is the legal evidence to the officers of the election of the fact of registration, and of the qualification of the electors whose names are on such copy.

The contestant asks that the entire election be set aside in this county, and that no votes shall be counted for either party, on the ground that the election was held without any registration in conforming to the law.

The evidence relied upon consists of the testimony of one James A. McCrory, the deputy clerk of court, who had charge of the clerk's office, and who performed, as it appears, such duties as were performed, in this county preparatory to the election. (Record, pp. 403-405.)

This deputy clerk was a Democrat, and was examined as a witness on behalf of contestant. It is proven by his testimony that no registration books were provided or used in this county, and that the only semblance or pretense of registration of the electors consists of "loose sheets of paper" containing the names of citizens, which were brought into the clerk's office by the registering officers from eight election districts.

The whole number of such districts was twelve, and from the other four this deputy clerk testifies that even such lists of names "on loose sheets of paper" were not made and brought to the clerk's office. McCrory can only name one district from which such irregular lists of names were returned that contained oaths required by the law to be taken and subscribed by the elector and registration officers. (Record, p. 405.)

It has been called to the attention of your committee, that it was proven by the clerk of the court, and other witnesses, in the contested election case of Bisbee vs. Hull, that there were no registration books provided or used in this county at the election of 1878.

It also appears that by a statute of Florida, passed in 1879, a considerable portion of the territory of the adjoining county of Volusia, was added to this county, Brevard, consequently it cannot be claimed that any of the citizens residing within this portion of the county had the right to vote by reason of any prior registration. And this new part of the county is included in that containing the eight election districts in which these lists of names "on loose sheets of paper" were made and delivered.

The registration books, under the laws of Florida, are public records, and the clerk of the court is the legal custodian of them. This deputy, who had charge of the office, could not well be ignorant in regard to the subject-matter of his testimony, and he evidently testified with some

reluctance, which may be accounted for from the fact that he was a political associate of contestee.

According to this testimony it is manifest that *the entire foundation for a legal election in this county was wanting*. As to the four districts in which not even the irregular lists of names "on loose sheets of paper" were made, there can be no pretense that there was any registration of any kind whatever. From these four districts 63 votes were returned for contestee, and 12 for contestant.

As to the other eight election districts, it can hardly be claimed that "loose sheets of paper" are registration books, such as the law requires. They could be manufactured, abstracted, and substituted at pleasure, with slight risk of detection.

To sustain this as a legal registration would do violence to the provision of the constitution and laws of Florida, would destroy all the safeguards against the frauds at elections which registration laws are intended to prevent, and would, we think, furnish greater facilities for fraud than the absence of any registration at all.

Your committee therefore hold that the election in this county must be set aside as illegal and void.

The principle is so well settled that an election held without registration, under laws requiring registration, is illegal, that the citation of authorities is deemed unnecessary.

The returns from this county give the sitting member 222 votes, and the contestant 74 votes, which are excluded from the count.

HAMILTON COUNTY.

It is charged by contestant that the result of the election at poll No. 3 in this county was affected by the use of intoxicating liquors, force, violence, and disorderly conduct, resorted to by the political friends of the contestee; that the authority of the United States supervisors and a deputy marshal were publicly defied, and that the officers of the election approved of such action and conduct, and discriminated illegally and corruptly against the Republicans in the management of the election and reception of votes.

Your committee find from the evidence that these charges are substantially sustained, and that the election at this poll was not, in any just sense, a free and fair election.

It is proven by a number of witnesses that the political supporters of contestee, in several instances, led colored men to the polls in a state of intoxication, which they had designedly produced, and forced them to vote a Democratic ticket; and that from the efforts of Republicans to prevent such conduct and to secure the right of each elector to vote a free ballot, violent quarrels ensued in front of the polling-window, and that the immediate vicinity of the polls was a scene of disorder, lawlessness, and threats of personal violence, continuing a considerable portion of the day, and that by such means the result of the election at this poll was effected.

Reference is made to the testimony of John W. Rackley, an Independent in politics, and late clerk of the Florida senate (Record, p. 1183); of E. J. Roulesson, United States deputy marshal (Record, p. 1189); B. E. Roulesson (Record, p. 1204); Isham Guillion (Record, p. 1193); and Cato Williams (Record, p. 1208).

Williams was one of the electors who was made to vote a Democratic ballot while intoxicated, and he certifies that he voted such ticket, contrary to his intentions, and was so drunk that one of his Democratic neighbors had to carry him home on a mule.

The law requires one general registration book for each county, and also another registration book for each election district into which the county is divided; and these district books are the original books of registration, in which each voter must write his name, or have it written by the registering officers, and take the oath of allegiance to the State and to the United States, which oath is to be printed or written at the commencement of the book. Opposite the voter's name must appear, in proper order, the number of the election district in which the voter resides, and the day, month, and year of his registration.

The law provides for copying by the clerk of the circuit court the names on the district books into the general registration book. This clerk is the registering officer for the election district in which his office is located, and he appoints a registering officer for each of the election districts of the county.

The registration must be closed ten days before the day of election, and a certified copy of the district book is to be delivered by the sheriff to the election officers, which copy is the legal evidence to the officers of the election of the fact of registration, and of the qualification of the electors whose names are on such copy.

The contestant asks that the entire election be set aside in this county, and that no votes shall be counted for either party, on the ground that the election was held without any registration in conforming to the law.

The evidence relied upon consists of the testimony of one James A. McCrory, the deputy clerk of court, who had charge of the clerk's office, and who performed, as it appears, such duties as were performed, in this county preparatory to the election. (Record, pp. 403-405.)

This deputy clerk was a Democrat, and was examined as a witness on behalf of contestant. It is proven by his testimony that no registration books were provided or used in this county, and that the only semblance or pretense of registration of the electors consists of "loose sheets of paper" containing the names of citizens, which were brought into the clerk's office by the registering officers from eight election districts.

The whole number of such districts was twelve, and from the other four this deputy clerk testifies that even such lists of names "on loose sheets of paper" were not made and brought to the clerk's office. McCrory can only name one district from which such irregular lists of names were returned that contained oaths required by the law to be taken and subscribed by the elector and registration officers. (Record, p. 405.)

It has been called to the attention of your committee, that it was proven by the clerk of the court, and other witnesses, in the contested election case of Bisbee *vs.* Hull, that there were no registration books provided or used in this county at the election of 1878.

It also appears that by a statute of Florida, passed in 1879, a considerable portion of the territory of the adjoining county of Volusia, was added to this county, Brevard, consequently it cannot be claimed that any of the citizens residing within this portion of the county had the right to vote by reason of any prior registration. And this new part of the county is included in that containing the eight election districts in which these lists of names "on loose sheets of paper" were made and delivered.

The registration books, under the laws of Florida, are public records, and the clerk of the court is the legal custodian of them. This deputy, who had charge of the office, could not well be ignorant in regard to the subject-matter of his testimony, and he evidently testified with some

reluctance, which may be accounted for from the fact that he was a political associate of contestee.

According to this testimony it is manifest that *the entire foundation for a legal election in this county was wanting*. As to the four districts in which not even the irregular lists of names "on loose sheets of paper" were made, there can be no pretense that there was any registration of any kind whatever. From these four districts 63 votes were returned for contestee, and 12 for contestant.

As to the other eight election districts, it can hardly be claimed that "loose sheets of paper" are registration books, such as the law requires. They could be manufactured, abstracted, and substituted at pleasure, with slight risk of detection.

To sustain this as a legal registration would do violence to the provision of the constitution and laws of Florida, would destroy all the safeguards against the frauds at elections which registration laws are intended to prevent, and would, we think, furnish greater facilities for fraud than the absence of any registration at all.

Your committee therefore hold that the election in this county must be set aside as illegal and void.

The principle is so well settled that an election held without registration, under laws requiring registration, is illegal, that the citation of authorities is deemed unnecessary.

The returns from this county give the sitting member 222 votes, and the contestant 74 votes, which are excluded from the count.

HAMILTON COUNTY.

It is charged by contestant that the result of the election at poll No. 3 in this county was affected by the use of intoxicating liquors, force, violence, and disorderly conduct, resorted to by the political friends of the contestee; that the authority of the United States supervisors and a deputy marshal were publicly defied, and that the officers of the election approved of such action and conduct, and discriminated illegally and corruptly against the Republicans in the management of the election and reception of votes.

Your committee find from the evidence that these charges are substantially sustained, and that the election at this poll was not, in any just sense, a free and fair election.

It is proven by a number of witnesses that the political supporters of contestee, in several instances, led colored men to the polls in a state of intoxication, which they had designedly produced, and forced them to vote a Democratic ticket; and that from the efforts of Republicans to prevent such conduct and to secure the right of each elector to vote a free ballot, violent quarrels ensued in front of the polling-window, and that the immediate vicinity of the polls was a scene of disorder, lawlessness, and threats of personal violence, continuing a considerable portion of the day, and that by such means the result of the election at this poll was effected.

Reference is made to the testimony of John W. Rackley, an Independent in politics, and late clerk of the Florida senate (Record, p. 1183); of E. J. Roulesson, United States deputy marshal (Record, p. 1189); B. E. Roulesson (Record, p. 1204); Isham Guillion (Record, p. 1193); and Cato Williams (Record, p. 1208).

Williams was one of the electors who was made to vote a Democratic ballot while intoxicated, and he certifies that he voted such ticket, contrary to his intentions, and was so drunk that one of his Democratic neighbors had to carry him home on a mule.

Guillion gives the names of certain voters whose votes were obtained for the Democratic candidates by the threat of depriving them of land they had contracted for if they voted otherwise.

The deputy marshal testifies that at about two hours before sunse there was not a dozen sober men at the polls.

It is proven that the officer of the election who received the ballot sat in the window of the polls with a revolver exposed upon his person that the officers allowed one man to vote a Democratic ticket who had been convicted of an infamous crime, and refused the vote of a Republlican elector who had been charged with such a crime, but had neve even been tried for it, though he offered to take the oath of a challenged voter ; and that these officers allowed a Democratic elector to vote in the polling-room unobserved after he had been challenged and refused to take the oath of a challenged voter and vote publicly. The deput marshal was compelled to abandon any effort to preserve order through fear of his life, and the officers of the election made no effort to preserv the peace and an orderly conduct of the election, which they had sworn to do, but acquiesced in all that occurred. Rackly and the two Roules sons testify that in their judgment, by the methods described, the con testant lost from 20 to 30 votes and the sitting member gained from 20 to 30 votes. It is also proven that printed posters were placed upon the polling-room and at other places near the polls, by the Democratic United States supervisors and other persons, warning against any inter ference by the Federal authorities.

The whole conduct of election officers may, though actual fraud be not apparent amount to such gross and culpable negligence, such a disregard of their official duties as to render their doings unintelligible or unworthy of credence, and their action entirely unreliable for any purpose. (McCravy, sec. 303.)

If it clearly appears that the fairness, purity, or freedom of an election has been materially interfered with by acts of violence, intimidation, &c., the election should be set aside. (Id., sec. 416.)

We are of the opinion that the election at this poll falls under the condemnation of the doctrines stated by McCrary in the section quoted and that the election should be set aside. The vote returned from this poll is, for Finley, 136, and for Bisbee, 68, which must be deducted from the official canvass.

ORANGE COUNTY.

The paper purporting to be a return from the poll in this county known as Fort Christmas is not signed by the officers of the election as appears from a certified copy thereof in evidence, and it is proven tha these votes stated in this paper were included in the official returns from the county. (Record, pp. 1129 and 76.)

Such a return is illegal, and no votes stated therein can be counted (McCrary on Elections, secs. 174 and 274.)

This document states that Finley received 30 votes and Bisbee 3 votes which we deduct from the count.

NASSAU COUNTY.

It is averred in the notice of contestant that an officer of the election of Odum's Branch poll in this county committed the fraud of substi tuting Democratic for Republican ballots.

It is proven by three witnesses, sworn on behalf of contestant, that one of the officers of election placed a Democratic ballot in the ballot

box, not delivered to him by an elector, in lieu of a Republican ballot that was delivered to him by an elector. The sitting member adduced no testimony controverting that of these three witnesses.

It is claimed that this return should be excluded, on the principle that if an officer of election is clearly shown to be guilty of deliberate fraud in a single instance, all his acts are tainted with dishonesty, and the *prima facie* character of the return, as evidence, is destroyed. (McCrary, secs. 441, 442, 303.)

The application of this principle would reject this return, but as the testimony establishes that this act of changing one ballot was done soon after the polls opened, and was not afterwards repeated, and the total vote was small, we have concluded to retain the return, and correct it by deducting one vote from Finley's vote and adding one vote to Bisbee's vote.

MARION COUNTY.

Objection is made to counting the votes stated in the Moss Bluff return in this county. The proof relied upon by contestant to exclude this return consists of the testimony of three witnesses.

The substance of all their testimony is that the supporters of the sitting member voted ballots which they took from a table in the polling-room; that during the day it was discovered by two of these witnesses that contestee's name was not on the ballots on this table. One witness, Heath (Record, pp. 578, 519), swears positively that he examined 25 to 30 of such ballots on the table from which the Democratic electors took their ballots, and that contestee's name was not on them. Another witness, Sellers (Record, pp. 516, 518), swears that he was present when the names of the candidates on the ballots voted were read to be tallied, and that contestee's name was not called out; at least if it was the witness did not hear of it.

All the officers of the election were political friends of the contestee, and it is proven that as the names of the candidates for each office upon a ballot were announced by one of the officers he handed the ballot to another officer of the election, who immediately tore it up and destroyed it, instead of laying the ballots aside until all of them had been canvassed.

The contestee has not attempted to explain or disprove the testimony taken by contestant, and for this reason it is urged that he could not.

It is true that the contestee could easily have proven that his name was upon these ballots voted by his supporters, if such were the fact, and by not doing so he has left the impression to operate that he could not, but the voters may have written contestee's name on their ballots, and there is no evidence that they did not, except the testimony tending to show that his name was not read when the votes were canvassed.

The elector who voted for the other Democratic candidates doubtless intended to vote for the contestee, and as the witness for contestant is not entirely positive that the name of contestee was not read from the ballots when they were canvassed, we have concluded to count the vote at this poll as returned.

BRADFORD COUNTY.

It is claimed by contestant that at the four polls in this county, known as Nos. 2, 3, 5, and 7, 76 persons voted who were not registered voters.

The evidence relied upon is a certified copy of the registration book

of the county, dated November 29, 1880, a certified copy of the list of names stricken from such book, at the annual revision thereof by the county commissioner, in the year A. D. 1878, and 1880, and also a certified copy of such book, dated March 15, 1877, purporting to be a copy of all the names registered on that date, from 1868, when the registration laws were first passed. (This last copy is in the record of the case of *Finley vs. Bisbee*, Forty-fifth Congress, page 758, offered in evidence at the argument of this case.)

The total number of votes returned from these four polls is 590, of which but 47 are returned for contestant. The poll-lists are in evidence, showing that the 76 persons voted, and if their names are not on the said certified copies of the registration books and lists of names stricken from such books, there being no evidence to the contrary, these votes are illegal. If deducted *pro rata*, according to the rule applied, whereas in this case it is not shown for whom such votes were cast, 70 should be deducted from contestee's vote, and 5 from contestant's, one vote being lost in fractions by this method of deduction.

As the decision of this question will not affect the final result on the merits of the case, your committee have not performed the work of examining the copies of the books and lists of names to ascertain whether or not the 76 persons, or any of them, are registered, and therefore have not deducted the votes of these persons in the tabular statement of corrections of the official vote.

According to the conclusions to which we have arrived, the official returns must be corrected as follows:

| | Finley. | Bisbee. |
|--|---------|---------|
| The total official vote returned is | 13,430 | 12,427 |
| Add to contestant's vote the votes tendered and rejected (Exhibit A) | 269 | |
| Deduct from contestee's votes the illegal vote cast for him (Exhibits B and C) | 96 | ..... |
| Deduct from contestee's vote at the Arredonda poll, 172; Newnansville poll, 146; Parker's Store, 155 | 473 | ..... |
| And add to contestant's vote the votes proven at said polls in excess of his returned vote, Arredonda, 191; Newnansville, 18; Parker's Store, 28 | 237 | |
| Madison County, deduct from contestee | 163 | ..... |
| And add to contestant | 165 | |
| Nassau County, Odwin's Branch poll, deduct from contestee | 1 | ..... |
| And add to contestant | 1 | 1 |
| Total of above corrections | 733 | 672 |
| Which deducted and added to the official vote gives the following result | 12,697 | 13,099 |
| To be still further corrected by deducting contestee's returned vote and contestant's returned vote in Brevard County | 222 | 74 |
| Deduct returned vote at No. 3 poll, Hamilton County | 136 | 68 |
| And at Fort Christmas poll, Orange County | 30 | 3 |
| Total | 388 | 145 |

Which deducted from the last stated result gives for Finley 12,309; Bisbee, 12,954, and a majority for Bisbee of 645.

Now concede to contestee at the two polls of Newnansville and Parker's Store, Alachua County, the difference between the total returned vote for Representative and the votes proven for contestant, and 255 votes would be deducted from Bisbee's majority, leaving him 390 majority. And even if the polls in Brevard County No. 3, Hamilton County, and Fort Christmas poll, Orange County, were not rejected, contestant would still have a majority of 147 votes.

In any view of the case founded upon the law and the evidence, the contestant has a majority of the legal votes cast.

It ought, however, to be stated:

Contestee claimed before the committee that a portion of contestant's evidence was taken after the expiration of the first forty of the ninety days allowed by statute (Rev. Stat., p. 1071) for the taking of testimony, and that some of that which was taken during the ten days allowed for rebuttal was not strictly in rebuttal, and that all such should be rejected and not considered by the committee.

It appears that contestant has given notice of the taking of a large number of witnesses, and proceeded to take them as fast as he could, but at the expiration of the forty days, to wit, on March 15, he had not got through with his list, and continued until they were finished, on the 16th, 17th, 18th, 19th, 21st, 22d, 23d, 25th, 26th, and 28th of March. Contestee's counsel left and would not remain after the 14th of March.

It is claimed, and the record sustains it, that contestee had consumed a great deal of time unnecessarily by his method of dilatory and useless cross-examination, probably with the object of delaying the taking of testimony.

It also appears that scenes of violence and public disorder prevented contestant's attorney from going into some parts of the district where the witnesses lived, so that he was thereby deprived of much of the first forty days.

It also appears that contestant did not occupy any portion of the forty days needed by contestee, and that he was not prejudiced at all by contestant's continuing to finish his witnesses after March 15, for contestee did not begin to take testimony in Madison County until the 16th of April; did not commence in Alachua County until the 13th of April, two weeks after contestant had got through. He examined altogether but fifty witnesses, occupying but sixteen days. Ten of these were examined on the question of the popularity or unpopularity of the candidates.

Contestant offered to agree to give his opponent all the time he wanted to answer the evidence objected to (record, p. 1066), and urged him to proceed to do so if he desired, and he obstinately refused, although he knew that testimony taken after the expiration of ninety days on consent of parties would be received, for such had been the case in his contest against J. S. Walls. (House Mis. Doc. No. 58, first session Forty-fourth Congress.)

He knew of the other facts stated and of the illness of counsel which had delayed the taking of the evidence entirely within the first forty days. And the committee think that a fair-minded man would have been most likely to enter into an agreement allowing further time, and he must be presumed to know the previous practice of the Committee on Elections to exercise discretion in such matters.

It is also evident that most and probably all of the evidence to which he now objects did not admit of an answer, as his attempt to answer other evidence of the same kind to which he does not object proved ineffectual. That taken during the last ten days was such from its nature that it could not be contradicted or its force impaired by any counter-evidence.

It is manifest, therefore, that contestee did not suffer and was not prejudiced by any delay or the acts complained of.

No complaint is made or pretense set up that the evidence was not fairly taken and accurately reported. He had full opportunity to cross-examine if he desired to do it, and also to answer it after the same was taken. But he did not choose to do so, and preferred to take the risk of its being considered. After the case was referred to the committee and

printed he did not appear or make any motion to strike out the evidence objected to, so that it might be supplied if the motion was granted, but took the objection for the first time at the argument.

The committee are clearly of the opinion that the evidence taken after the expiration of the forty days should be received and considered, and they have considered it; that the evidence taken in rebuttal should also be considered. All of the evidence was taken within the ninety days allowed by statute, so that in that respect the statute was literally complied with, and the forty days allowed contestee was more than sufficient for his purposes, as he did not begin until about two weeks after contestant had finished, and then occupied but sixteen days, while he had the offer of all the more time which he desired.

It is manifest that contestee did not believe he could answer the evidence and, in the spirit manifested by his cross-examination, designed apparently to use up the time, so as to get beyond the forty days, and by leaving when the forty days were up, and when he knew contestant was going on to finish his list of witnesses, he was seeking some technical advantage if he could get it. The testimony in rebuttal, also taken within the ten days, appears to have been proper and competent, and should be, and has been, considered. The course of the committee seems fully justified by good precedents.

No statute can tie the House down to any rules of procedure.

Its provisions are directory, constituting only convenient rules of practice, and the House is at liberty, *in its discretion*, to determine that the ends of justice require a different course. (McCrary, pp. 353, 358, 359.)

In 1st Bartlett, Rep., 223, 224, a Democratic committee held that if either party desired further time to take testimony after the time had expired, *it was his duty to give notice to his opponent and proceed and take it and present it to the committee, which would, on good reasons being shown, receive and consider it.*

So, too, in regard to rebutting evidence; that rests in the discretion of a court always, even if not strictly in rebuttal. (Reed *vs.* Kneeas, Brightley's Election Cases, 416; Richardson *vs.* Stewart, 4 Birney, 197.)

Evidence taken seems to have been in rebuttal, and was such as not to admit of being answered or controverted, and the precise order of same is immaterial.

Votes proved to have been cast illegally for contestee, by evidence taken during the last ten days: 15 in Duval, 12 in Putnam, 12 in Saint John's; 39 in all.

The whole number of votes tendered and refused, and those for contestee proved to be illegal, involved in all the evidence taken during last ten days, is precisely 178.

All the rest is in Brevard, showing no registration; and No. 3, Hamilton poll, assailed for fraud and illegality.

If the 178 are cast out of the majority of 442, this would still leave 264. So the objected evidence, if rejected, would not change the result in favor of contestant.

Your committee therefore recommend the adoption of the following resolutions:

Resolved, That Jesse J. Finley was not elected as a Representative to the Forty-seventh Congress from the second Congressional district of Florida, and is not entitled to the seat.

Resolved, That Horatio Bisbee, jr., was duly elected as a Representa-

tive from the second Congressional district of Florida to the Forty-seventh Congress, and is entitled to his seat as such.

A. A. RANNEY.
W. H. CALKINS.
J. T. WAIT.
F. JACOBS, JR.

WM. G. THOMPSON.
GEO. C. HAZELTON.
AUGUSTUS H. PETTIBONE.
S. H. MILLER.

EXHIBIT A.

List of names of electors whose votes were tendered and refused, citing page of record where testimony will be found.

MARION COUNTY.

| No. | Names. | Affidavit in record. | Voting precinct. | Testimony in record. |
|-----|-----------------------|----------------------|------------------|----------------------|
| | | Page. | | Page. |
| 1 | Anderson, Charles | 607 | Flemington | |
| 2 | Barbor, Samuel | 607 | do | 490 |
| 3 | Bucs or Reese, Harley | 660 | Cotton Plant | 496-501 |
| 4 | Bennett, Moses | 636 | Millwood | 434 |
| 5 | Burney, Ned | 619 | do | |
| 6 | c. Borco, Paul, jr | 564 | Cotton Plant | 501-505 |
| 7 | Boyd, Joseph | 639 | Millwood | 462 |
| 8 | Bright, Jesse | 548 | Shady Grove | 548 |
| 9 | Brooks, Samuel | | Flemington | 481 |
| 10 | c. Boatwick, George | 564 | Cotton Plant | 497-501 |
| 11 | Brown, Amos | 601 | Flemington | 483 |
| 12 | Calvin, Alex | 632 | Millwood | 434 |
| 13 | c. Carlisle, William | 618 | Shady Grove | 419 |
| 14 | Carroll, Alex | | Millwood | 427 |
| 15 | Caston, David | 549 | do | 469 |
| 16 | *Colding, Frank | | do | 427 |
| 17 | *Colding, Frand | | Flemington | 483 |
| 18 | Coleman, Robert | 643 | Millwood | 427-458 |
| 19 | Contee, Elias | 652 | do | 426 |
| 20 | Coy, Lon | 589 | Cotton Plant | 501 |
| 21 | Currie, Aaa | 576 | Shady Grove | 531-576 |
| 22 | Dart, Budd | 623 | Millwood | 457 |
| 23 | Davis, Daniel | 585 | Cotton Plant | 496-501 |
| 24 | Davis, Jockey | 650 | Millwood | 427-437 |
| 25 | c. Davis, Owen | | | 425 |
| 26 | Davis, Simon | | Cotton Plant | 496-501 |
| 27 | Davis, William | 589 | do | 494 |
| 28 | c. Dickerson, Willis | 656 | No. S | 417 |
| 29 | Douglass, Henry | | Millwood | 427-473 |
| 30 | Douglass, Charles | 590 | Cotton Plant | 494-501 |
| 31 | Elkins, Manuel | | Millwood | 427-433 |
| 32 | Ellis, Joseph | 600 | Flemington | 483 |
| 33 | Evana, Harry | 637 | Millwood | 443 |
| 34 | Evana, Joshua | | do | 452 |
| 35 | Evana, Rance | | Flemington | 490 |
| 36 | Evans, Williams | 594 | Millwood | 473 |
| 37 | Finley, John | 659 | Cotton Plant | 501 |
| 38 | Finley, Jonas | 582 | do | 501 |
| 39 | Foster, Charles | 635 | Millwood | 427-434 |
| 40 | Foster, Moses | 593 | do | 427-478 |
| 41 | Frazier, Aaron | 599 | No. 1 | |
| 42 | Frazier, Isiah | 635 | Millwood | 429 |
| 43 | Furgerson, Larry | | do | 427 |
| 44 | Galloway, Prince | 598 | No. S | |
| 45 | Gray, John | 653 | Millwood | 448 |
| 46 | Gaskins, Edmund | 651 | do | 427 |
| 47 | Gaskins, Robert | 645 | do | 427-451 |
| 48 | Gaskins, Thomas | 641 | do | 427-472 |
| 49 | c. Gibson, Jesse | 617 | Shady Grove | 419 |
| 50 | c. Gilliard, Jack | 570 | Cotton Plant | 498 |
| 51 | Grav. John | 574 | do | 501 |
| 52 | Green, Allen | | Millwood | 469 |
| 53 | Green, David | | do | 470 |
| 54 | Green, Benjamin | 625 | do | |
| 55 | Hamilton, Carolina | | do | 427-453 |
| 56 | Henderson, Jack | 615 | Millwood | 473 |
| 57 | Harvey, James S. | 649 | do | 427 |
| 58 | Harria, Wash | 614 | Flemington | 483 |
| 59 | Jackson, Andrew | | Millwood | 446 |
| 60 | Jackson, Calhoun | | do | 443 |
| 61 | Jackson, David | 631 | do | 440 |
| 62 | Jackson, Richard | | do | 451 |

EXHIBIT A—Continued.

MARION COUNTY.

| No. | Names. | Affidavit in record. | Voting precinct. | Testim rec |
|-----|---------------------------|----------------------|--------------------|---------------|
| | | Page. | | Pt |
| 63 | Jacobs, Jack..... | 657 | do | |
| 64 | James, George..... | 634 | do | |
| 65 | c. Jones, Perry | 568 | Cotton Plant..... | |
| 66 | c. Jones, Philip ..... | ..... | No. 2..... { | |
| 67 | Jones, Raymond | 600 | Flemington | |
| 68 | Johnson, William..... | 648 | Millwood | |
| 69 | Kennedy, Henry..... | 658 | Cotton Plant..... | |
| 70 | c. Leman, Harry ..... | ..... | Shady Grove..... | |
| 71 | Leonard, Charles..... | 594 | Millwood | |
| 72 | Lewis, Frank..... | 585 | Cotton Plant..... | |
| 73 | Lewis, Francis..... | 610 | Flemington | |
| 74 | Lewis, Henry..... | ..... | Lake Wier..... | |
| 75 | Lewis, James..... | ..... | No. 2..... | |
| 76 | Ladson, Loudon | 624 | Millwood | |
| 77 | Mason, Olmstead | 612 | Flemington | |
| 78 | McCallum, Wash..... | 592 | Cotton Plant..... | |
| 79 | McCradle, Johnson..... | 640 | Millwood | |
| 80 | McGee, Lewis..... | ..... | ..... do | |
| 81 | Menchau, A. J..... | 583 | Cotton Plant..... | |
| 82 | Miller, Wiley..... | ..... | No. 2..... | |
| 83 | Milton, Aaron | 572 | Cotton Plant..... | |
| 84 | Mitchell, Joseph..... | 546 | No. 2..... | |
| 85 | Mitchell, Martin..... | 586 | Cotton Plant..... | |
| 86 | Mitchell, Simon..... | ..... | Millwood | |
| 87 | Milton, Smith..... | 602 | Flemington | |
| 88 | Owens, Harry..... | 621 | Millwood | |
| 89 | Palmer, Stephen..... | 642 | do | |
| 90 | c. * Plair, Robert..... | ..... | No. 2..... | |
| 91 | * Plair, Robert | 646 | Millwood | |
| 92 | Parks, Louis..... | 621 | do | |
| 93 | Pristes, Jasper ..... | ..... | ..... do | |
| 94 | Purvis, Green | 633 | do | |
| 95 | Rawls, Calamus..... | 603 | Flemington | |
| 96 | Reddington, Lewis ..... | ..... | Millwood | 4 |
| 97 | Rivers, Charles..... | 587 | Cotton Plant..... | |
| 98 | Roberts, Samuel..... | 609 | Flemington | |
| 99 | Roberts, Wash..... | 611 | do | |
| 100 | Robinson, Dan..... | 613 | do | |
| 101 | Robinson, Wash..... | ..... | ..... do | |
| 102 | Riley, William..... | 596 | No. 1..... | |
| 103 | Roberts, Alex | 688 | Cotton Plant | |
| 104 | Rutland, Thomas..... | ..... | Millwood | |
| 105 | Rutledge, Thomas..... | ..... | ..... do | |
| 106 | Sams, Charles ..... | ..... | ..... do | |
| 107 | Scofield, Daniel C..... | ..... | ..... do | |
| 108 | Scarvel, Wary..... | 605 | Flemington | |
| 109 | Scott, Frank..... | ..... | Millwood | |
| 110 | Small, Peter | 641 | do | |
| 111 | Smith, Louis..... | 575 | No. 2..... { | |
| 112 | Shaw, Peter | 581 | Cotton Plant | |
| 113 | Stark, Wyatt..... | ..... | Millwood | |
| 114 | Stoggers, Henry..... | 579 | Cotton Plant | |
| 115 | Swain, Thomas..... | 584 | do | |
| 116 | Taylor, Samuel..... | 631 | Millwood | |
| 117 | Terry, Pleasant ..... | ..... | ..... do | |
| 118 | Thomas, Gabriel..... | ..... | Lake Wier | |
| 119 | Thompson, Burrell..... | 647 | Millwood | |
| 120 | Tillis, Robert..... | 547 | No. 2 | |
| 121 | Turner, Robert..... | ..... | Millwood | |
| 122 | Tyson, William..... | 622 | do | |
| 123 | Vancross, Neptune..... | ..... | ..... do | |
| 124 | Ward, Perry ..... | ..... | ..... do | |
| 125 | c. Washington, Cuffy..... | ..... | No. 2 | |
| 126 | Washington, George..... | 609 | Flemington | |
| 127 | Weathers, Sam..... | 628 | Millwood | |
| 128 | Williams, George | 626 | do | |
| 129 | Williams, John..... | ..... | Cotton Plant | |
| 130 | Williams, Solomon ..... | ..... | ..... do | |
| 131 | Williams, Thomas | 577 | do | |
| 132 | Williams, Wade | 591 | do | |
| 133 | Williams, William | 629 | Millwood | |
| 134 | Williard, Jack ..... | ..... | Cotton Plant | |
| 135 | Wilson, Ephriam | 606 | Flemington | |
| 136 | Wilson, George ..... | ..... | Millwood | |
| 137 | Wright, Richard ..... | ..... | ..... do | |
| 138 | Young, Ira | 644 | do | |

EXHIBIT A—Continued.

ORANGE COUNTY.

| No. | Record. | Registration. | Remarks. |
|-----|--------------------------|---------------|------------------------------|
| | | Page. | |
| 1 | Ames, George..... | 749 | Registration sworn to. |
| 2 | Ames, Henry..... | 754 | Do. |
| 3 | Berry, Joseph..... | 752 | Do. |
| 4 | Bowen, Samuel..... | 759 | Do. |
| 5 | Calvin, Isaac..... | 763 | 1,041 Arrested at polls. |
| 6 | Conner, Joseph..... | 755 | 1,041 |
| 7 | Engleb, Randall..... | 763 | Registration sworn to. |
| 8 | Hartly, J W..... | 748 | 1,044 |
| 9 | Harper, Daniel..... | 761 | Registration sworn to. |
| 10 | Hill, Nelson..... | 760 | Do. |
| 11 | Humphreys, Wyatt..... | 753 | 1,044 |
| 12 | Johnson, George W..... | 750 | Registration sworn to. |
| 13 | Jones, William..... | 757 | 1,044 |
| 14 | Madison, James..... | 756 | 1,046 |
| 15 | McFadden, Prince..... | 753 | Registration sworn to. |
| 16 | McKnight, Solomon..... | 750 | Do. |
| 17 | McKinney, Alexander..... | 764 | Do. |
| 18 | Owens, Samuel..... | 754 | Do. |
| 19 | Reeves, Thomas..... | 762 | 1,047 Registration sworn to. |
| 20 | Reynolds, W E..... | 759 | Do. |
| 21 | Robertson, Wm W..... | 763 | 1,047 Registration sworn to. |
| 22 | Robinson, Marshall..... | 758 | Do. |
| 23 | Robinson, Riley..... | 754-760 | Registration sworn to. |
| 24 | Sherman, Allen..... | 757 | 1,048 |
| 25 | Singh, Charles..... | 758 | 1,049 |
| 26 | Shedrick, Adam..... | 756 | Registration sworn to. |
| 27 | Smith, Reuben..... | 763 | 1,048 |
| 28 | Stevenson, Isaac S..... | 761 | Registration sworn to. |
| 29 | Tillman, Anatian..... | 749 | 1,049 |
| 30 | Walker, Dick..... | 751 | Registration sworn to. |
| 31 | Williams, George..... | 752-753 | 1,050 |

PUTNAM COUNTY.

| | | |
|------------------------|---------|------------------------|
| 1 Calvin, R. W..... | 828-828 | Registration sworn to. |
| 2 Jefferson, John..... | 830 | Do. |

VOLUSIA COUNTY.

| | | |
|-------------------------|-----|------------------------|
| 1 Hunter, William..... | 885 | Registration sworn to. |
| 2 Johnson, Alfred..... | 885 | Do. |
| 3 Roe, Alfred..... | 883 | Do. |
| 4 Telfair, Mack..... | 884 | Do. |
| 5 Wellburg, George..... | 883 | Do. |

COLUMBIA COUNTY.

| | | |
|------------------------|-----|------------------------|
| 1 Brown, James..... | 846 | Registration sworn to. |
| 2 Daniels, Frank..... | 848 | Do. |
| 3 Johnson, Israel..... | 845 | Do. |
| 4 Weston, Richard..... | 848 | Do. |

SAINT JOHN'S COUNTY.

| | | |
|------------------------|-----|------------------------|
| 1 Fowler, Charles..... | 850 | Registration sworn to. |
| 2 Hefner, William..... | 850 | Do. |

NASSAU COUNTY.

| | | |
|--------------------------|----------|---|
| 1 Thompson, William..... | 810, 811 | Registration sworn to. Vide affidavit, ballot attached. Record, page 812. |
|--------------------------|----------|---|

EXHIBIT A—Continued.

ALACHUA COUNTY.

| No. | | Record. | Registration. | Remarks. |
|-----|-----------------------------|---------|---------------|--|
| | | Page. | | |
| | <i>Parker's Store poll.</i> | | | |
| 1 | Colbert, Samuel | 347 | ..... | Registration sworn to. |
| 2 | McGinnis, Tony | 370 | ..... | Do. |
| 3 | Mulberry, Joseph | 364 | ..... | Do. |
| 4 | Roberts, David | 367 | ..... | Do. |
| 5 | Wright, Richard | 346 | ..... | Registration sworn to, 355. |
| | <i>Archer poll.</i> | | | |
| 9 | Berrahan, Nero | 314 | ..... | Registration sworn to. |
| 7 | Doby, Richard | 316 | ..... | Do. |
| 8 | Jones, Ed | 317 | ..... | Do. |
| 9 | Payton, Israel | 316 | ..... | Do. |
| 10 | Taylor, Peter | 315 | ..... | Do. |
| | <i>Waldo poll.</i> | | | |
| 11 | Name not given | | | Vote cast on ballot. Finley erased, and Bisbee's name ten. Rejected by officers. ord. page 292, 292.) |
| | HAMILTON COUNTY. | | | |
| 1 | { Names not given | | | { Two legal votes cast not co (See Record, page 840.) |
| 2 | | | | |

List of 83 electors whose votes were tendered and not received at Live Oak poll. (Record,

(Copy of registration book, record, page 789.)

SUWANEE COUNTY.

| No. | Names. | | No. on reg- istration book. | Remarks. |
|-----|--------------------------|----------|-----------------------------------|---------------------------|
| 1 | Archibol, Henry | Reg..... | 29 | |
| 2 | Austin, Jerry | "..... | 28 | |
| 3 | Brown, Milton | "..... | 37 | |
| 4 | Bryant, Amos | "..... | 40 | |
| 5 | Burk, Andrew | "..... | 41 | |
| 6 | Camel, Jarvis | "..... | 127 | |
| 7 | Carlisle, Charles | "..... | 106 | |
| 8 | Carruthers, Elijah | "..... | 112 | See name, record, 772. |
| 9 | Carruthers, James | "..... | 128 | See record, page 794. |
| 10 | Coleman, Henry | "..... | 110 | |
| 11 | Comer, Anderson | "..... | 108 | See record, page 786. |
| 12 | Coney, Noah | "..... | 130 | |
| 13 | Covington, J. T | "..... | 117 | |
| 14 | Bright, Daniel | "..... | 151 | See record, page 781. |
| 15 | Davis, Jasper | "..... | 157 | |
| 16 | Davis, Jesse | "..... | 158 | See record, page 785. |
| 17 | Davis, Thomas | "..... | | Swear to registration, 77 |
| 18 | Devine, Jacob | "..... | 156 | |
| 19 | Emmons, Alonzo | "..... | 164 | See record, page 786. |
| 20 | Evans, William | "..... | 163 | |
| 21 | Farnell, Henry | "..... | 189 | |
| 22 | Fields, Lewis | "..... | 184 | |
| 23 | Fields, John | "..... | 194 | |
| 24 | Fields, Philip | "..... | 166 | |
| 25 | Fields, Thomas | "..... | 187 | |
| 26 | Figgs, Benjamin | "..... | 165 | |
| 27 | Frazer, Lee | "..... | 193 | |
| 28 | Goodman, Nat | "..... | 196 | |
| 29 | Griffin, Solomon | "..... | 205 | |
| 30 | Grimes, Adam | "..... | 293 | See name, record, page 71 |
| 31 | Grimes, Thomas | "..... | 198 | See record, page 776. |
| 32 | Henderson, Lewis | "..... | 233 | |
| 33 | Herring, Horace | "..... | 240 | See record, page 781. |
| 34 | Holmes, John | "..... | 235 | |
| 35 | Holmes, Phillip | "..... | 243 | See record, page 704. |

SUWANEE COUNTY—Continued.

| No. | Names. | | No. on registration book. | Remarks. |
|-----|----------------------------|---------|---------------------------|------------------------------|
| 36 | Homer, Henry | " | 234 | See record, page 781. |
| 37 | Hooker, Warren | " | 248 | |
| 38 | Jackson, Benjamin | " | 280 | |
| 39 | Jackson, Peter | " | 269 | |
| 40 | Johnson, M. J | " | 285 | |
| 41 | Johnson, Robert | " | 272 | |
| 42 | Jones, Andrew | " | 281 | |
| 43 | Jones, E. J | " | 283 | See record, page 794. |
| 44 | King, Vernal | " | 288 | |
| 45 | Lambert, Jackson | " | 299 | |
| 46 | Lee, Dempsey | " | 297 | |
| 47 | Lewis, Moses | " | 290 | |
| 48 | McClellen, Edward | " | 328 | See record, page 775. |
| 49 | McGee, Henry | " | 334 | |
| 50 | McLeilly, Peter | " | | Swears to registration, 777. |
| 51 | Marshall, George | " | 326 | See record, page 785. |
| 52 | Mattair, Harry | " | | Swears to registration, 785. |
| 53 | Mitchell, John | " | 323 | |
| 54 | Mitchell, Tony | " | 303 | See record, page 782. |
| 55 | Molton, Edward | " | 344 | |
| 56 | Moore, James | " | 324 | See record, page 773. |
| 57 | Morgon, Solomon | " | 341 | |
| 58 | Moseley, Bryant | " | 305 | See record, page 768. |
| 59 | Moton, Carter | " | 325 | See record, page 783. |
| 60 | Murphy, Henry | " | 345 | |
| 61 | O'Neal, John | " | 365 | |
| 62 | Owens, Tony | " | 377 | |
| 63 | Patterson, Alexander | " | 375 | |
| 64 | Phillip, Richard | " | 369 | |
| 65 | Reddick, Charles | " | 378 | |
| 66 | Roundtree, Alex | " | 385 | |
| 67 | Sands, Hays | " | 428 | |
| 68 | Smith, Henry | " | 425 | |
| 69 | Stephen, Chester | " | 421 | |
| 70 | Stewart, William | " | 447 | See record, page 783. |
| 71 | Stickney, Moses | " | 443 | |
| 72 | Stofford, Adam | " | 419 | |
| 73 | Swaim, Primus | " | 431 | See record, page 777. |
| 74 | Taylor, Shode | " | 503 | See record, page 781. |
| 75 | Washington, George | " | 541 | |
| 76 | White, James | " | 542 | |
| 77 | Wiggins, Lewis | " | 558 | |
| 78 | Wilson, Ned | " | 558 | |
| 79 | Wilson, Thomas | " | 566 | |
| 80 | Williams, Cainer | " | 545 | |
| 81 | Williams, Lewis | " | 551 | |
| 82 | Williams, Samuel | " | 559 | |
| 83 | Williams, Thomas | " | 565 | See record, page 781. |

EXHIBIT B.

List of alien-born persons who voted for contestee without exhibiting naturalization papers or declaration of intention to become citizens.

| | | Record page. | Remarks. |
|-----------------|-------------------------|--------------|-------------|
| ALACHUA COUNTY. | | | |
| | Molly, J. W | 292, 293 | Challenged. |
| DUVAL COUNTY. | | | |
| 2 | Dolan, D. A | 1213 | |
| 3 | Dzialynski, M. A | 1214 | |
| 4 | Fallen, Patrick | 1211 | |
| 5 | Hildebrandt, J | 1212 | |
| 6 | Finnen, Richard | 1213 | |
| 7 | Jacobs, Lionel | 1212 | |
| 8 | McCallum, J. D | 1212 | |
| 9 | McMurray, John | 1214 | |
| 10 | McQuaid, Patrick | 1213 | |
| 11 | Meyerson, M. | 1211 | |
| 12 | Muller, Gustave | 1215 | |
| 13 | Tischler, Phillip | 1211 | |
| 14 | Thompson, J. B | 1210 | |
| 25 | Witschen, J. D | 1214 | |

EXHIBIT B—Continued.

| | | Record page. | Remarks. W. J. K. |
|----------------------|----------------------------|-----------------|----------------------|
| MARION COUNTY. | | | |
| 16 | Cordero, John..... | 409 | |
| 17 | Hattig, Josh | 421, 535 | Challenged. |
| 18 | Hetherington, George | 423 | |
| 19 | Jones, Wm. E..... | 410 | |
| 20 | Johnson, N. J..... | 509, 511 | |
| 21 | Madden, Patrick..... | 429, 479 | Challenged. |
| 22 | Myerson, Albert..... | 409 | Do. |
| 23 | Schmerin, I..... | 501 | Challenged, |
| 24 | Shaffer, Charles..... | 408 | Do. |
| 25 | Stewart, James..... | 483, 486, 487 | |
| 26 | Ward, Timothy..... | 424 | |
| NASSAU COUNTY. | | | |
| 27 | Elluman, John A..... | 801 | |
| 28 | Fitzgerald, Robert..... | 799 | |
| 29 | Fitzpatrick, Thomas..... | 801 | |
| 30 | Gage, Henry..... | 805 | |
| 31 | Glaibee, Albert..... | 803 | |
| 32 | Leigour, Joseph..... | 806 | |
| 33 | Lohman, A. W..... | 807 | |
| 34 | Lohman, J. F..... | 804 | |
| 35 | Hobin, Henry..... | 799 | |
| 36 | Henderson, R. W..... | 805 | |
| 37 | Huot, C. H..... | 806 | |
| 38 | King, H. W..... | 802 | |
| 39 | Klutz, Julius..... | 802 | |
| 40 | McWalters, James..... | 801 | |
| 41 | Mode, Joseph..... | 799 | |
| 41 | Mooney, I. H..... | 807 | |
| 42 | Nickola, G..... | 799 | |
| 43 | Paton, M. J..... | 805 | |
| 44 | Peterson, Henry..... | 804 | |
| 45 | Rutishauser, J. C..... | 802 | |
| 46 | Schnitger, William..... | 803 | |
| 47 | Steele, Arthur..... | 803 | |
| 48 | Stork, Gustav..... | 803 | |
| 49 | Seydel, A..... | 806 | |
| PUTNAM COUNTY. | | | |
| 50 | Gresham, John..... | 827-831 | |
| 51 | Ivera, Jno. M..... | 818 | |
| 52 | Ivera, William..... | 820 | |
| 53 | -Lelienthal, B. L..... | 819 | |
| 54 | Mann, A. W..... | 821 | |
| 55 | Meyers, J. M..... | 819 | |
| 56 | Miller, George..... | 823 | |
| 57 | Peterman, H..... | 822 | |
| 58 | Peterman, Peter..... | 821 | |
| 59 | Richmond, L..... | 820 | |
| 60 | Salowski, J. H..... | 819 | |
| 61 | Shalley, Thomas..... | 822 | |
| SAINT JOHN'S COUNTY. | | | |
| 62 | Alexander, Thomas..... | 853 | |
| 63 | Britt, John | 853 | All numbered fr |
| 64 | Clohersy, David | 853 | to 73, but 3, were |
| 65 | Doyle, Jerry..... | 853 | lenged. |
| 66 | Fitzpatrick, Andrew..... | 853 | Testimony of D |
| 67 | Kelly, Andrew | 853 | Sappy, Record, § |
| 68 | McMahon, John | 853 | |
| 69 | Merchant, August | 853 | |
| 70 | Monegeon, Louis E..... | 849 | |
| 71 | McNierny, John | 853 | |
| 72 | Starnowski, J. H..... | 853 | |
| 73 | Storon, Herman | 853 | |

EXHIBIT C.

Miscellaneous illegal votes cast for contestee.

ALACHUA COUNTY.

| | Page of record. |
|--------------------------------------|-----------------|
| 1. G. T. Thigpen, non-resident..... | 299-292 |
| 2. S. P. Phillips, non-resident..... | 291 |
| 3. C. E. Whiting, non-resident..... | 291, 292 |

MARION COUNTY.

| | |
|--------------------------------------|----------|
| 1. Reuben Storke, convict..... | 513-666 |
| 2. G. W. Pendervis, convict..... | 509-571 |
| 3. R. V. Pendervis, convict..... | 509-571 |
| 4. John Geiger, convict..... | 489 |
| 5. Luther Geiger, convict..... | 489 |
| 6. Samuel Geiger, convict..... | 489 |
| 7. R. T. Meany, non-resident..... | 411 |
| 8. Allen Thompson, non-resident..... | 478, 479 |

PUTNAM.

| | |
|---|----------|
| 1. Frederick Morwick, unregistered..... | 827, 828 |
|---|----------|

HAMILTON COUNTY.

| | |
|---|----------|
| 1. James Kite, non-resident..... | 838, 839 |
| 2. Chester A. Register, non-resident..... | 839 |
| 3. Condasy Oxendine, non-resident..... | 840 |

COLUMBIA COUNTY.

| | |
|-----------------------------------|----------|
| 1. Pery Keene, minor..... | 845 |
| 2. John Harvey, non-resident..... | 847, 848 |

SAINT JOHN'S COUNTY.

| | |
|--|----------|
| 1. James M. Owens, non-resident..... | 850, 851 |
| 2. T. W. Murdock, non-resident..... | 850, 851 |
| 3. Daniel Bootright, non-resident..... | 851 |
| 4. H. L. Ballard..... | 851 |

DUVAL COUNTY.

| | |
|-----------------------------------|------|
| 1. Frank Wright, voted twice..... | 1217 |
|-----------------------------------|------|

BISBEE vs. FINLEY.

Summary of results on case made by contestant, as claimed.

| | Votes. |
|---|--------|
| 1. Votes tendered and rejected which should be counted for contestant, Exhibit A..... | 268 |
| 2. Illegal votes cast for Finley by aliens without exhibiting their naturalization papers, Exhibit B..... | 74 |
| 3. Illegal votes cast for Finley by persons disqualified on various grounds, Exhibit C..... | 22 |

ALACHUA COUNTY.

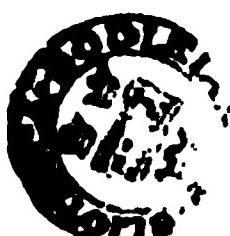
| | |
|---|-----|
| 4. <i>Arredonda poll.</i> —Reject this poll and count for Bisbee 191 votes proven in excess of returned vote..... | 191 |
| And deduct Finley's vote, 172 (not having proven any vote for himself, none can be counted)..... | 172 |

| | |
|---|-----------|
| 5. <i>Newnansville poll.</i> —Reject this poll and count for Bisbee 18 votes proven in excess of returned vote..... | 18 |
| And deduct Finley's returned vote, 148 (not having proven any votes for himself, none can be counted)..... | 146 |
| 6. <i>Parker's Store poll.</i> —Reject this poll and count for Bisbee 28 votes proven in excess of returned vote..... | 28 |
| And deduct Finley's returned vote, 155 (not having proven any vote for himself, none can be counted)..... | 155 |
| 7. <i>Madison County.</i> —Correct frauds by adding to Bisbee's majority in the county | 371 |
| Total of above corrections..... | 1,445 |
| Deduct Finley's apparent majority..... | 1,003 |
| Bisbee's majority..... | 442 |

| | |
|---|------------|
| For sake of argument, concede to Finley difference (255) between total returned vote at the two polls of Newnansville and Parker's Store, and the number proven for Bisbee, which is all that he possibly could have proven had he tried to prove his vote, and add to Finley's votes..... | 255 |
| Leaves Bisbee a majority of..... | 187 |
| True majority brought forward..... | (442) |

OTHER QUESTIONS.

| | |
|---|---------|
| 8. <i>Brerard County.</i> —Set aside election and deduct Finley's majority, 148..... | 148 |
| 9. <i>Hamilton County.</i> —Poll No. 3. Set aside elections and deduct Finley's majority..... | 63 |
| 10. <i>Orange County.</i> —Fort Christmas poll. Return unsigned by officers; reject and deduct Finley's majority | 27 |
| 11. <i>Nassau County.</i> —Odums Branch poll. Reject returns and deduct Finley's majority | 30 |
| 12. <i>Bradford County.</i> —Correct results by deducting, <i>pro rata</i> , 76 votes unregistered at polls Nos. 2, 3, 5, and 7, by which Finley loses 70 votes and Bisbee 5 (excluding fractions), reducing Finley's majority..... | 65 |
| 13. <i>Marion County.</i> —Reject return Moss Bluff poll, and deduct Finley's majority. | 59 |
| Upon whole case Bisbee's majority is..... | 839 |



BISBEE *vs.* FINLEY.

APRIL 21, 1882.—Mr. BELTZHOOVER, from the Committee on Elections, submitted the following as the

VIEWS OF THE MINORITY:

We respectfully submit the following statement of the conclusions at which we have arrived, and the reasons therefor, in the contested-election case of *Bisbee vs. Finley*:

This contest comes from the second Congressional district of the State of Florida, which is composed of seventeen counties. The election was held on November 2, 1880, and the official returns filed in the office of the secretary of state show that Mr. Finley received 13,105 votes and Mr. Bisbee received 11,953. (See Record, 1056.) The official majority received by Mr. Finley was therefore 1,152. On January 15, 1881, Mr. Bisbee served a notice on Mr. Finley contesting his election and attacking the polls in all the counties of the district but one (Clay). On February 3, 1881, Mr. Finley served his answer on Mr. Bisbee, replying to and denying fully all his alleged grounds of contest. (See Record, 1-18.)

On the issues raised by the notice and answer over 1,200 pages of testimony were taken.

For convenience, and the ready and intelligent application of the law to this case as presented by the record, it is deemed necessary to state the principles involved in its determination.

The constitutional and statutory provisions relating to suffrage may be divided into two classes : First, mandatory, which define the right of suffrage, and, secondly, directory, which direct the manner of its exercise. The former relate to the *substance* of the right ; the latter to the *mode* of its exercise. The former confer the right ; the latter are as so many safeguards to conserve it. The right is *derived* from the former and its exercise regulated by the latter. The former determine the *primal* and ultimate authority in the Government ; the latter serve as means to invoke and give force to it. The means being subordinate to the end, it follows that directory provisions, whether constitutional or statutory, must be liberally construed, and so applied as to give legitimate force and efficacy to the *will* of the sovereign power in the State. A different rule would subordinate the substance to the shadow, and would in the end substitute technical quibbles for the ballots of the qualified electors. The primal inquiry is, Whom did the qualified electors *choose*, as *evidenced* by their ballots cast or offered but refused ? The ascertainment of the will of the qualified electors is the end of directory statutes, and this attained, "the reason ceasing the law also ceases."

The House is the exclusive judge of the qualifications, elections, and returns of its own members. In the exercise of this prerogative it is not bound by the technical rules of judicial procedure, nor even by its own precedents. These may be persuasive, and, in so far as they embody the *wisdom* of experience, enlighten the mind and contribute to right conclusions. In the exercise of this attribute of sovereignty the House is charged in the ultimate with the maintenance of the right paramount and preservative of all other rights—the elective franchise. Therefore the House is absolutely untrammeled, and answerable only to the sovereignty where this power emanates. The electors can and should accept no apology for any evasion or abuse ; every case should be decided upon its own merits, and electors should accept no other conclusion than the *rindication in fact* of the right of representation. Technical quibbles should never be permitted to defeat honest ballots, for the plain reason that so long as the people have the power, and do actually choose the law-makers, they have had it in their power to eliminate or amend whatever works injury to their rights or prosperity. And whatever affects seriously that right touches the vitals of the Republic. We cannot, therefore, be too cautious or circumspect in deciding a contest involving a seat in this House. And if we are wise and patriotic, we *will* be aided by rules whose soundness has been attested by experience.

The returned member, by the familiar rule, "Officers are presumed to have done their duty," is supposed to have been duly elected. This presumption should be maintained unless repelled by conclusive evidence. If a return, local or general, be attacked for fraud or illegality, the testimony of officers holding the election is of great weight, because of opportunities to know, and the motive of duty to observe all things relating to the election in their charge ; and such is the weight of their evidence that it cannot be overthrown by circumstantial evidence unless so strong as to admit of no reasonable hypothesis compatible with the truthfulness and integrity of the officers.

The first point made by the contestant in his brief is "that the county

canvassing board of Madison County arbitrarily rejected the returns from two election districts, from which 325 votes were returned for contestee and 474 for contestant," thereby giving contestant 149 majority. The contestee replies that there is no specification of this claim by the contestant in his notice of contest, nor anywhere else; that not only was there no notice of this claim, but no testimony was taken on the subject to support it. On the contrary, the contestant's notice of contest stated that he would ask to have all the returns from Madison County "rejected as illegal and fraudulent."

This is what contestant says in his notice as to Madison County:

MADISON COUNTY.

In this county the gross fraud was committed by your political friends of stuffing the ballot-boxes with ballots containing your name for Representative to Congress, and drawing out from such boxes ballots containing my name for Representative to Congress, at each of the two polls in the town of Madison, and at each of the several polls in the said county known as Cherry Lake, Hamburg, Greenville, and the two polls at Mosely Hall, and at each of the other polls in said county, whereby I was cheated and swindled out of five hundred or more votes. I shall ask that the returns from each of said polls be rejected as evidence of the true vote cast, and that the votes actually cast for me be counted as cast. I shall ask that the county canvass be rejected as illegal and fraudulent.

This certainly was no notice to contestee that contestant proposed to do the very opposite of his notice, and ask to count instead of reject. It was reasonable for the contestee to suppose that contestant, in claiming that the whole county should be rejected, would be content to pass over the two precincts that were already rejected. The contestant himself attacked these two precincts in his notice of contest. They were rejected by the county canvassing board upon what, in the absence of all proof, must surely be presumed to have been legal ground, and no testimony was taken to show that they were improperly rejected or should be counted. It is a strange position for contestant to take at the conclusion of the contest to ask that returns that were rejected in the official canvass, returns that he himself asked to have rejected in his notice of contest, and that no evidence is adduced to show were not rejected properly, should now be counted. This claim is so uncertain and dubious that in no part of the whole case, from the beginning to the end of the contest, were the two precincts named, and not until contestant filed his reply to contestee's brief, after the argument was over and the case submitted, did he disclose the names of these two precincts. We can entertain no doubt that this claim of the contestant should be disallowed.

We next come to the first county attacked by contestant.

ALACHUA COUNTY.

In this county three polls are assailed by contestant, to wit, Arredonda, Newnansville, and Parker's Store. (Rec., p. 3.) The following is the reference to this county by contestant in his notice:

That at the Newnansville poll, and the Arredonda poll, and Parker's Store poll, in Alachua County, the gross fraud was perpetrated by your political friends of stuffing the ballot-boxes with ballots containing your name, and ballots containing my name for Representative to Congress were taken out of the boxes, so that the total vote cast for me was not returned; and I shall ask that the returns from these three polls be excluded as evidence of the vote cast, and that the total vote cast for me be counted as cast at these polls.

Arredonda poll.

The contestant asks that the return from this poll be rejected, and that no votes shall be counted for either candidate except such as each has proven by evidence other than the return.

The grounds upon which contestant asks to have this return set aside and disregarded, and the vote proven by *aliunde* testimony, are as follows:

1. That the ballot-box was purposely concealed from the public view by a passage-way erected to the polls.
2. That the vacancy in the election board occasioned by the absence of the Republican inspector was illegally filled.
3. That a Republican watcher was not allowed in the voting-room.
4. That the officers of election used whisky, and that Virgil George, the Republican inspector, was drunk.
5. That the ballot-box was thrown under the table, or so handled in the poll-room as to indicate fraud.
6. That the ballot-box after the election was in the custody of the inspector, who had the key.
7. That the election board, in violation of the law, adjourned and went to supper before counting the vote.

This is a full and fair statement of the grounds alleged, and from which it is claimed such fraud and irregularity are to be inferred as to discredit the returns and reject the poll. In support of these allegations the contestant called five witnesses, viz: J. T. Walls, a colored man, who was a candidate for State senate; Jack Trapp, a colored man, who was a United States deputy marshal, and a brother of the candidate for the legislature; Edward Sammons, who was United States supervisor; Charles Dubose, president of the Republican club, and Ransom Baskins, who was the Republican tally clerk.

Against these charges of fraud the contestee called W. T. Rice, a merchant, railroad agent, and postmaster of Arredonda; J. R. Flewellen, a Democratic inspector; Samuel D. Reed, a Democratic inspector; Virgil George, a colored man, and the Republican inspector; Samuel C. Tucker, the clerk of the election; Amos George, a colored voter; W. R. Mills, a country merchant, and Julius A. Carlisle, the clerk of the circuit court. We have, therefore, five witnesses on the one side to show the fraud, and eight on the other side to disprove it. We will take the points up in their order, and give the language of the witnesses in support of and against each.

1. Was the ballot-box purposely concealed from public view by a passage-way to the polls?

For the contestant:

J. T. Walls swears:

What I mean by keeping order is that Mr. Cisero Nichols, deputy sheriff, at or about the opening of the polls, there being such a cluster of people, made a passage-way to the polls about sixteen feet long out of boards, and wide enough for two persons to stand side by side, and there was a place for them to pass out at the window end after voting.

Ransom Baskins swears:

Q. Can you describe the interior of the room where the voting occurred and the canvass took place?—A. There were two rooms connecting with the polling-room. Between the store and the polling-room there was a passage-way which was open. When they came back from supper they did not bring the box to canvass the votes into the same room where the voting had taken place, but they took it into another room under the same roof. [Witness here draws a diagram of the building in which

the voting takes place, which is introduced and filed in evidence, and marked Exhibit R.]

For the contestee :

W. F. Rice swears :

Q. Do you know or did you hear any complaints of the election being so conducted at that poll so that the qualified voters who were present did not have the opportunity to vote ?—A. I heard no complaint of that kind.

J. R. Flewellen swears :

Q. State whether or not the said election at Arredonda was so conducted that all the qualified voters present were allowed to vote without interference or hinderance.—A. It was.

S. D. Reed swears :

Q. What disposition was made of the ballot-box ?—A. It was in the custody of the inspectors, and in full view of the voters.

Q. Can you state whether or not the ballot-box was kept in the presence of the inspectors, and not concealed from the public, the whole time from the opening of the polls until the closing of the canvass ?—A. The ballot-box was at all times, from the opening of the polls until the closing of the count, in the presence of both the political parties and two or more of the inspectors, and not concealed from the public view.

In addition to this testimony all the witnesses swear that the election was fairly conducted and peaceable. We do not think, therefore, that on the evidence this allegation of fraudulent concealment of the ballot-box is sustained.

2. Was the vacancy in the election board illegally filled ?

The testimony on this point is as follows :

For contestant :

J. T. Walls swears :

Q. Were all the inspectors there when the polls opened ? If any were absent, state whom, and if you know the cause of his absence, please state.—A. They were not; Ephraim George was appointed by the county commissioners; was absent. He was, as I understand, out of the county for about a year, and had not returned up to the time of opening the polls. I understood that the sheriff had a warrant for him for forging a note.

Q. State, if you can, how the vacancy caused by his non-appearance was filled.—A. By the inspectors.

Q. Can you state whether or not the majority of the electors present at the polls when George was appointed an inspector by the other inspectors were in favor of said George to act as such, or did they express themselves as dissatisfied, and want to have the privilege of electing an inspector themselves to fill the vacancy ?—A. I heard some of them express themselves as objecting to the manner in which George was made an inspector, but no objection to George, claiming that they had the right to elect an inspector.

Q. Was Virgil George, the inspector who you mention in your direct testimony, a Republican or a Democrat, and was he a white man or a colored man ?—A. He is a Republican in politics and a colored man.

For contestee :

Mr. J. R. Flewellen swears :

Q. How came Virgil George to be chosen as inspector, and how came he to act as such ?—A. The name of Virgil George was sent to the clerk, as we understood, and by mistake the clerk entered the name of Ephraim George. The said Ephraim George had not been for some years a resident of this county.

Q. Was Virgil George present on the grounds at the opening of the polls on election day ?—A. He was.

Q. State whether or not the said Virgil George was regarded generally, both by the Democratic and Republican voters present, as well as by the inspectors, as the person intended to be the Republican inspector at the polls on that day.—A. He was; he was considered by everybody as the man appointed to be inspector at said poll.

Q. Was any opportunity offered by the inspectors present to choose an inspector in his place if he had not been so regarded ?—A. There was.

Q. Did they avail themselves of this opportunity, or did they decline to do so?—
A. They said nothing about it.

Q. Was there any objection interposed to his acting as inspector?—A. None that I heard of.

Q. Were any Republican representatives or officials admitted into the polling place at said election in Arredonda during the election and canvass of the vote on that day?—A. There was.

Q. Was there or not any distinction made by the inspectors in that respect between Democrats and Republicans?—A. There was none.

Q. Who first asked Virgil George to act as inspector of said election?—A. I don't know. It was generally conceded by whites and blacks of both parties that he was the inspector. Virgil told me so; also of the mistake in print, and asked me what to do about it. I told him if any objection was made I would have an election at the polls for an inspector; there being none, he acted as one.

Q. Did you or Mr. Reid, or either of you, give any formal notice that there was a vacancy among the inspectors which the voters present were entitled to fill then and there by election?—A. Immediately before going into the room to be sworn in, the question was asked by several colored men in the crowd who were the managers or inspectors. I told them that myself and L. D. Reid were the Democrats, and Virgil George was intended for the Republican; that he was the only man who can read and write, and I supposed that he would act, as they had none other that could do it in that party here. I told him to go in, and if there was any objection made we would have an election.

Q. Did you make any further notice after you were sworn in, you or Mr. Reid?—
A. We did not.

Q. About how many voters were present at the polls at the time you opened them?—
A. I don't suppose there were five absent of all the voters who voted that day.

Virgil George swears:

Q. Were you at Arredonda at said election?—A. I was.

Q. Did you or not act in any official capacity at that election; and, if so, what?—
A. I did act as inspector; was elected inspector that morning.

Q. Why was it that you acted as such inspector?—A. I understood that the clerk had made a mistake when Ephraim George, my son, was appointed inspector, as he had been absent from the county for two years previous to the election, and that I was the party intended to be appointed.

Q. Are you and were you at the time of said election a Republican or Democrat?—
A. I am a Republican, and was at the time of said election.

Q. Were you drunk or sober on that day?—A. I was sober.

Q. Was there not any objection made by any of the voters present to your acting as inspector?—A. None that I know of.

Q. Did you or not, while you were acting as inspector, feel anxious for the success of the Republican party, and did you not consider it to be your duty to watch and protect the interests of that party at said election?—A. Yes, sir; I did.

Q. Were you so watchful of that interest?—A. I was.

Q. Can you state whether or not said election was a peaceful and fair election, or otherwise?—A. It was a peaceful, fair, and square election, as far as I could see.

Sam D. Reed swears:

Q. State whether or not it was understood that Virgil George was intended to be one of the inspectors at the election at Arredonda precinct?—A. It was. It was by mistake that the county commissioners appointed Ephraim instead of Virgil George, as the said Ephraim George was not at the time a citizen of this county.

Q. State whether or not said election at Arredonda was so conducted that all the legal voters present had an opportunity to vote, whether they were Republican or Democrat.—A. So far as I know every one had an opportunity to vote as he pleased.

Q. You state on your direct examination that Virgil George was intended as inspector for Ephram George. Now, state if that was the intention of the county commissioners. How do you know it to be so?—A. My impression is derived from the fact that Virgil stated it, and it was the general impression throughout the county.

The testimony very clearly shows that there was no fraudulent purpose in the appointment of Virgil George as the Republican inspector at this poll, instead of his son Ephraim, who seems to have been named by the commissioners by mistake. Indeed it is hard to see why the contestant should complain of having an honest man of mature years, and to whom Mr. Walls says there was no objection, instead of a young man who was a criminal and a fugitive from justice. The appointment

was not strictly or technically correct, but it was honestly made and no harm resulted.

3. Was a Republican watcher refused admission to the voting-room?

The testimony on this point is as follows:

For contestant:

J. T. Walls swears:

Q. Can you state, of your own knowledge, whether or not a representative to act in behalf of the Republican party inside of the polling place was nominated and preferred by the Republicans present at the polls—was made and appointed? And if there was such representative nominated and appointed, state, if you can, his name, and whether or not he acted, or was allowed to act, in such representative capacity inside of said polling place.—A. I can. There was one nominated and preferred; myself, J. T. Walls, was the person. I did not act; I was not allowed to act; inside of the polling place. I was refused admission into the room or polling place by the clerk, Samuel C. Tucker, and the inspectors, J. R. Flewellyn and Samuel D. Reid.

Q. State the objection they made to your admission inside.—A. Mr. Flewellyn's objection was that I was an interested party, being a candidate for the senate.

Jack Trapp swears:

Q. Were you there when a Republican representative was chosen to act inside of the polls? If so, state his name, and whether or not he was admitted, and tell all you know about it.—A. I was there when there was one chosen; his name was J. T. Walls; he was not allowed inside of the polling place. The inspectors refused admission. The inspectors who refused him were Flewellyn and Reid, because he was an interested party.

Edward Sammons swears:

Q. Were you a Repnblican and a supervisor at Arredonda at the last election?—A. I was.

Q. What did you regard to be your duty as such supervisor?—A. It was to look out for all frauds that might happen against the Republicau party that day.

Q. Was that all the duty that you thought devolved upon you as such supervisor?—A. I had it in my mind that it was my duty to see that each party was dealt fairly and squarely by, and if there was any frauds made I was to make a report to the chief supervisor of the State.

Q. Did you or not make such report; and, if so, to whom did you make such report as such chief supervisor?—A. I brought Mr. Hughes a blank report; I furnished all the facts, and got him to fill it out for me.

Q. Have you a copy of that report?—A. No, I have not got it now; it was burned up in my house.

Q. What time was this report made after the election?—A. The second day after the election.

Q. Who was Mr. Baskin, whom you say was called on by the inspectors to tally the votes; was he a Republican or Democrat?—A. He has been a Republican, but I cannot say what he was then.

For contestee:

J. R. Flewellyn swears:

Q. Was or not J. T. Walls an applicant to be admitted into the polling place as a Republican?—A. He was not until dark; then he made direct application to me, through Mr. Reid, one of the inspectors. I refused on the grounds that he had a representative, and that he was a party at interest, being a candidate for the State senate. His representatives were Edward Sammons, and another whose name I do not now remember; those parties were admitted to the polling place.

Virgil George swears:

Q. Were there or not any Republican representatives interested in the success of the Republican party admitted into the polling-room during said election and during the canvass of the vote?—A. Yes, sir; Edward Sammons, acting as supervisor, and Ransom Baskins were admitted.

Q. Were they present during the voting and canvassing of the vote?—A. Ed. Sammons was present all the time, and Ransom Baskins spent most of his time outside while the voting was going on, but was present after the polls were closed.

This testimony discloses that the contestant was fairly represented

by zealous friends during the day of the election at the polls and at the count of the votes. Mr. Sammons swears that as United States supervisor he regarded it as his special duty to watch the interests of the Republican party, and did so. It is also shown that while Mr. Walls may have been legally qualified to act as a watcher inside of the polls, it was highly indelicate and improper that he should have insisted on acting in any capacity in the conduct of the election at which he was a candidate for a high office. It was a technical violation of the law to refuse him permission to act, but there is no evidence whatever that he suffered any harm by being refused; but, on the contrary, the evidence shows that he himself did not claim that there was any fraud committed by reason of his exclusion. It is also shown that he did not make application until evening.

4. Were the officers of the election disqualified by using whisky, and was Virgil George, the Republican inspector, drunk?

The testimony on this point is as follows:

For contestant:

Ransom Baskins swears:

Q. Was there any liquor in the room while the canvass of the vote was going on; and, if so, how much did you see, and who had it; and was it or not all drank before the votes were canvassed?—A. Yes; there was liquor; I saw one bottle and a flask. Everybody who had anything to do with counting the votes was drinking that whisky or liquor. I think that it was all drank.

J. T. Walls swears:

Q. Can you state, to the best of your knowledge and belief, that Virgil George, the party who acted as inspector, and who you say was appointed by the other inspectors to fill the vacancy, was in a fit condition to perform his duties, or, if he was, was he competent to?—A. When he was taken to their assistance by them I thought that he was drinking some; my opinion is that in a sober condition he would be fully competent.

Ransom Baskins swears:

Q. Was not Virgil George, one of the inspectors, pretty well filled up with whisky or some other intoxicating liquor?—A. I saw him drinking, and at times saw him with his eyes shut and his head nodding.

For contestee:

Samuel D. Reid swears:

Q. Do you know the inspector Virgil George? And, if so, state whether or not he is, and was at the time of said election, a Democrat or a Republican.—A. I am acquainted with Virgil George. I have every reason to believe that he is, and was at the time of the election, a strong Republican.

Q. Was he drunk or sober on election day?—A. He was sober.

Q. Does not Virgil George bear the reputation of being a dissipated man, and have you seen him frequently intoxicated?—A. I don't think he bears that reputation. I think I have seen him intoxicated about twice in three years.

Virgil George swears:

Q. Were you drunk or sober on that day?—A. I was sober.

Samuel C. Tucker swears:

Q. Please state whether or not Virgil George on the day of said election drank anything intoxicating?—A. I don't know, because I did not see him do it.

The testimony further shows that the officers of the election were men of high character for integrity and honor, and had no interest in the result. It is respectfully submitted that there is nothing to maintain this point.

5. Was the ballot-box thrown under the table, or so manipulated and used in the poll-room as to prove that a fraud was committed?

The evidence on this point is as follows :
For contestant :

J. T. Walls swears :

Q. Was the ballot-box concealed at any time before said adjournment from the public view ; if so, where was it ?—A. It was. When the polls were announced to be closed, the clerk of the election, Mr. Tucker, reminded the inspectors to be careful with the ballot-box, and Mr. Flewellyn, one of the inspectors, took the ballot-box off the table where it was sitting near the window, and threw it under the table towards the entrance from the bar. I did not see anything more of the ballot-box until Mr. Flewellyn, one of the inspectors, picked it up as they adjourned for supper.

Q. At the time you state he threw the box under the table, was there any confusion or excitement going on ; if so, what was it ?—A. I did not notice any.

Q. At the time the ballot-box was thrown under the table, was there any debate going on relative to an adjournment for supper ?—A. There was none at that time. After the tally-sheet was prepared there was some discussion as to whether they would proceed to count or go to supper, and they adjourned for supper.

Q. Who took part in the discussion, as near as you can recollect ?—A. Nobody, to my recollection, but the inspectors. We did not see the ballot-box. Some of them said they were hungry, and would not get home before midnight, and so they adjourned.

Q. You state that shortly after the polls closed the ballot-box was thrown under the table. Was that before or after they proceeded to make the tally-sheet, and how long before they adjourned for supper ?—A. It was thrown under the table about the time they commenced to make the tally-sheet, and I did not see it again for about half an hour, when they adjourned for supper.

Q. Please state who were in the room during the election.—A. I saw Mr. Flewellyn, S. D. Reid, Samuel Tucker, Virgil George, Edward Sammons, and John Bevill. There may have been others in the room. The time I noticed these particularly was when I was refused admission.

Q. What time of day did the polls close ?—A. About sunset.

Q. Do you know how many were in the room when the polls closed, and who they were ?—A. J. R. Flewellyn, S. D. Reid, S. C. Tucker, Virgil George, John Beville, and Edward Sammons.

Q. Who was Edward Sammons ? Was he a Democrat or a Republican, a white man or a colored man ?—A. He is a colored man. He acted as Republican United States supervisor, and is a Republican.

Jack Trapp swears :

Q. Were you there at the close of the polls ?—A. I was.

Q. What was done ; did they proceed to canvass the votes at the close of the polls ?—A. Yes ; they pretended to proceed, but they did not. They said they were going to supper, but they did not go right away. Flewellyn, one of the inspectors, ordered the window to be pulled to. They staid there and talked about twenty-five minutes and I pulled the window open again, and then Flewellyn took the box, saying he was afraid that some one would take the box and run off with it, and threw it under the table. I told him they were not apt to do it ; and then they closed the window and went to supper. I went with the inspectors. They carried the box with them. I disremember which one had the box ; and I did not see the box any more after they carried it in the house.

Q. In what capacity did you act on the day of election at Arredonda ?—A. I was United States deputy marshal.

Q. By whom were you appointed ?—A. The marshal of the United States court.

Q. What did you say was done with the ballot-box when the polls were closed ?—A. They put it under the table. I was standing outside at the window.

Q. When did the polls close ?—A. About sundown.

Q. Did you or not see any one tamper with the ballot-box in any way at any time ?—A. No, sir ; I did not.

Q. Are you a Republican or Democrat, and what was your politics at the time of the election ?—A. I am a Republican, and was then.

Edward Sammons swears :

Q. What official capacity, if any, did you occupy at the election at Arredonda held on the 2d day of November last ?—A. I was United States supervisor at that election.

Q. Were you present when the polls were opened ?—A. I was.

Q. Were you present when the polls were closed ?—A. I was.

Q. Where were you when the polls were closed ?—A. Inside of the polling-room.

Q. Did the inspectors immediately proceed to count the votes when they announced the polls closed ?—A. They did not.

Q. Tell what was done and what took place at the close of the polls inside of the polling room.—A. Mr. Flewellyn said, "We announce now that it is 6 o'clock and th

polls are closed." After that there were no more votes taken, and we stopped some considerable time in the room. I do not know how long.

Q. Where was the box all this time after the polls were announced closed?—A. Mr. Flewellyn was standing with his hand on it.

Q. Was the box at any time removed from the public view while in the room?—A. It was.

Q. State when and how long.—A. During the time he had his hand on the box the question arose: He said, "Boys, it may take us all night to count these votes, and as I have supper prepared for six we had better get it." Then he said, "We need a tallyman; we had better fix that up before supper." Then arose an argument between him and me about it; and I asked him who would that be. He said that was left to me; that he was looking out for himself, and I must look out for myself. At that time Sam Reid touched me and I started out in the little anteroom, and I heard a rumbling behind me and I noticed back to see what it was, and it was the box falling under the table, and I stood in sight and talked to Mr. Reid perhaps about a quarter of an hour before it was picked up from the floor and put on the table. At that time Mr. Reid and myself had decided to let Walls come in and keep tally. Flewellyn objected to it and picked up the box and walked out, and when he got outside of the door he gave it to Virgil George; and Virgil, and Flewellen, and Sam Reid, myself, Sam Tucker, John Bevill, and Dr. Carew, and Jack Trapp marched out for Mrs. Burk's boarding-house. I went with them to within about fifty yards of her door; myself and Sam Reid stopped and we talked there perhaps ten minutes; the others went on with the box. After that myself and him went to the boarding-house. Jack Trapp was standing on the piazza outside of the door and Mr. Reid told him that he did not regard his badge; that he did not belong there and had better get away. I had an invitation in with them to supper, and as I passed in through the door to the supper-room, on the right of me as I passed in, I saw Virgil George sitting by the side of the door with the box in his lap, and the other inspectors were in there with him. I went on by the door about thirty feet further and on the left I went into a room, and had been there about ten minutes and Virgil George came to the room where I was and left the box behind him. In about ten or fifteen minutes afterwards Mr. Flewellyn came to the room where Virgil and I was and brought the box with him. He says, "Hurrah, boys, we must get back."

Q. You said in your direct examination that after the polls were closed the ballot-box was for a time concealed from the public view. Will you state when, how long, and how that was?—A. During the time what I called concealed it was from them outdoors, but not from those in the house. It was about fifteen minutes, more or less. I had no watch.

For contestee:

J. R. Flewellen swears:

Q. What was done with the ballot-box when the polls were closed, and afterwards, until the votes were canvassed?—A. At sundown I closed the polls, after having given fifteen minutes beforehand. The ballot-box remained on a goods box, which served as a table, with the open side down, until dark; then I took it up in my arms, while we had two lighted candles in the room, and gave it to the Republican inspector, and closed the window of the room that we were then in, and the inspectors together went out of the door and went a distance of about a hundred yards to supper at a boarding-house, the said inspector retaining the ballot-box. While the Democratic inspectors were at supper the Republican inspector was seated in the same room with the box. After the Democratic inspectors got through eating I went with Republican inspector to another room, where his supper was served; then he gave me the ballot-box, and I held it immediately in his presence until he got through eating; then I gave the ballot-box back to him, and Mr. S. D. Reid, the other inspector, joined us, and we went back to the room where the election was held, and in the adjoining room, with the door wide open, and four candles burning, I announced that we would then commence the canvassing of the votes, which we did.

Q. State whether or not the ballot-box, from the time the polls were closed up to the time the inspectors went to supper and carried it, was exposed to the public view.—A. It was.

Q. Were there others in the room during this time under the inspectors, and were any of them Republicans?—A. There were two supervisors, one a Republican, the other a Democrat, and the clerk, in the room during the entire time.

Q. Was the ballot-box at any time, from the closing of the polls to the time it was taken by the Republican inspector, Virgil George, put or thrown under a table?—A. It was not; there was not a table in the room.

Q. Was there not a little table occupied by the clerk?—A. There was a small candle-stand; not much larger than the paper on which this testimony is written.

Q. Was there any attempt made by you, or any of the inspectors, at any time up to

the closing of the canvass and the ascertainment of the result of said election, to conceal or tamper with said ballot-box?—A. There was not.

Q. State whether or not, so far as you were concerned, and so far as your observation extended to the other officers of the election, there was an earnest and honest effort to comply with the election laws at said election at Arredonda.—A. We tried in every respect to go by the election laws. We had them with us, and complied with them as well as we knew how.

Sam D. Reid swears :

Q. Were you present at the closing of the polls on the day of election at Arredonda?—A. I was.

Q. What disposition was made of the ballot-box?—A. It was in the custody of the inspectors, and in full view of the voters.

Q. What was the size of the room where the election was held?—A. I suppose it to be eight by ten, and may be ten by twelve.

Q. State whether or not you saw the inspector Flewelling throw the ballot-box at any time under the table.—A. I did not. There was not a table large enough for the box to have gone under in the room. The only table in the room was a small toilet table, the construction of the legs of which was such as that a box could not have been put under it.

Q. State whether or not there was any distinction made in the admission of Democratic and Republican representatives inside the polling place.—A. There was no distinction.

Q. State whether or not the election held at Arredonda as aforesaid was a fair and a peaceable one, or was it otherwise.—A. It was fair, impartial, and peaceable, and in conformity with the election laws.

Virgil George swears :

Q. Were you present when the polls were closed?—A. I was.

Q. Did you see any of the inspectors, at any time, put the ballot-box under a table or in any other concealed place?—A. No; I did not.

Q. Did you not see Inspector Flewelling put the ballot-box under a table?—A. No, sir. Upon my word and honor I did not.

Q. Was there any table in the polling-room?—A. There was a very small table in the room.

Q. What became of the ballot-box after the polls were closed?—A. After the polls were closed we consulted whether we would go to supper, and, after having concluded to go to supper, we then considered what we would do with the box. It was determined that we all would go together to the supper-house, about seventy-five yards off, and that one of the inspectors take the ballot-box and another the key. They gave me the box and Mr. Flewelling the key, and we all went together to supper.

Samuel C. Tucker swears :

Q. Were you present at the closing of the polls at Arredonda at the election held there on the 2d day of November last?—A. I was.

Q. Can you state whether or not the ballot-box was put under a table by any of the inspectors, or in any concealed place, by them or any one else?—A. It was not, that I saw. We had no table while there in the room when the ballots were received except a little toilet table, on which I did my writing. The ballot-box was set on a large goods box.

Q. What disposition was made of the ballot-box after the polls were closed?—A. It remained on that box until just before we went to supper. Mr. Flewelling took the ballot-box from off this box, the wind blowing strongly at the time in the window where the box was sitting, and held it in front of the inspectors. This was done as a precautionary measure, for fear that the lights might be blown out by the wind and some one might snatch the ballot-box.

This testimony leaves it in very great doubt whether the ballot-box was on the floor at all. It clearly shows that it was not purposely thrown there. It still more clearly shows that it was at all times in the presence of friends of both parties. Flewelling, Reid, and Tucker, who were present in the room with the ballot-box, were Democrats; George, Beville, and Sammons were Republicans, and there is no scintilla of proof that there was any tampering with the box or any fraud committed.

Walls, who was outside of the house and could not see what was going on in the room, says that—

Flewellen took the ballot-box from the table where it was sitting near the window and threw it under the table towards the entrance from the bar.

Sammons, on p. 194 of the Record, says:

At that time Sam Reid touched me, and I started out in the little ante-room, and I heard a rumbling behind me, and I noticed back to see what it was, and it was the box falling under the table, *and I stood in sight* and talked to Mr. Reid perhaps about a quarter of an hour before it was picked up from the floor and put on the table.

This witness Sammons testifies, on page 195 of the Record, as follows:

Q. Were you a Republican and a supervisor at Arredonda at the last election?—A. I was.

Q. What did you regard to be your duty as such supervisor?—A. It was to look out for all frauds that might happen against the Republican party that day.

Regarding it to be his duty, as he swears, "to look out for all frauds that might happen against the Republican party," and standing *in sight* of the ballot-box from the time it is alleged to have been thrown under the table, watching it, as he evidently was, can any impartial mind, seeking after truth, come to a conclusion from this evidence that it was possible that this ballot-box could have been tampered with while it was under that table, if it was ever thrown under a table? It was *entirely impossible*, as is shown by the contestant's own testimony.

From the following testimony of the Republican supervisor, Sammons, it will be seen that the ballot-box was never concealed from those in the house (see Rec., 195):

Q. You said in your direct examination that after the polls were closed the ballot-box was for a time concealed from the public view. Will you state when, how long, and how that was?—A. During the time what I called concealed it was from them outdoors, but not from those in the house. It was about fifteen minutes, more or less. I had no watch.

Who were in the room from whom, Sammons says, the box was never concealed? Contestant's witness, Walls, on p. 189 of the Record, answers this question as follows:

Q. Please state who were in the room during the election.—A. I saw Mr. Flewellyn, S. D. Reid, Samuel Tucker, Virgil George, Edward Sammons, and John Bevill. There may have been others in the room. The time I noticed these particularly was when I was refused admission.

Q. What time of day did the polls close?—A. About sunset.

Q. Do you know how many were in the room when the polls closed, and who they were?—A. J. R. Flewellyn, S. D. Reid, S. C. Tucker, Virgil George, John Bevill, and Edward Sammons.

In this little room, of the dimensions of 10 by 12 feet, with all these persons in sight of the ballot-box, and when Sammons, Mr. Bisbee's *warm supporter*, was watching out for frauds against the Republican party, as he testifies, to conclude that the ballot-box was tampered with, or could be tampered with, cannot be done, we submit, with any regard for law or evidence.

6 and 7. Was the ballot-box in the possession of the same person who had the key during the adjournment, and was there any fraud or illegality committed during the adjournment?

The testimony on these points is as follows, viz:

For contestant:

J. T. Walls swears:

Q. You stated you were there all day. Were you there when the polls closed? If you were, state what took place, if anything.—A. I was there when the polls closed. They did not proceed to count the votes when they announced the polls closed. They were about one-half hour preparing a tally-sheet, after which they adjourned to sup-

per. They were gone about three-quarters of an hour to a house kept as a boarding-house.

Edward Sammons swears :

Q. You say that Virgil George took the ballot-box at the door and all the inspectors and yourself and the other supervisors and officers of the election went to Mrs. Burk's to get supper, do you ?—A. Yes; and we all went to Mrs. Burk's to get our supper.

Q. How far is Mrs. Burk's from the polling place ?—A. I presume about three hundred yards.

Q. You said in your direct examination that when you came into the house you saw in a room on your right the inspector, Virgil George, sitting with the box in his lap and the other inspectors around him. Were there any other persons in the room besides the inspectors, and was the room lighted up or not ?—A. There was other persons in the room, and it was lighted up.

Q. How long was it from the time you all left the polling place to go to supper before you returned to the polling place ?—A. I had no watch; about a half or three-quarters of an hour, I think.

Q. Were you inside of the polling place all day ?—A. All day, except when I went out to urinate.

For contestee :

J. R. Flewelling swears :

Q. Was the ballot-box whilst at the supper-house at any time kept in a secreted condition ?—A. It was not.

Q. Was it kept while at the supper-house and while at the polling place in a lighted or dark room—in a lighted or dark ?—A. The ballot-box at all times was in a lighted room and open to the public.

Samuel D. Reid swears :

Q. At the time of taking the ballot-box from the polling place to the supper-room, was any protest made or objections raised by the Republicans, or any of them, to such removal ?—A. No objections were made to me, and if made to others I did not hear it.

Q. Did the Republicans, or any of them, insist on following the box into the supper-room to see that it was not tampered with, and were they not prohibited or refused admission into the room, and was not this refusal the cause of Trapp's using the language you characterize as obscene ?—A. There was no one refused admission that I know of. On the contrary, I told them that they could go to the doors and windows and look at it all the time. A number of the voters did follow the box from the polling place to the supper-room.

Q. Of this number, were they mostly Democrats or Republicans, and were they or any portion of them admitted into the supper-room ?—A. They came to the doors and windows. I did not invite them in. There was no guard to keep them out and no hinderance that I knew of.

Virgil George swears :

Q. What was done with the ballot-box while you were at supper ?—A. I held the box while the two other inspectors were eating, in their presence. After they were through eating, I gave Mr. Flewelling the box, and he then held it in the presence of myself, Edward Sammons, and Mr. Reid.

Q. Were there not other Republicans who followed the inspectors from the polling place to the eating-house where they carried the box with them to supper ?—A. Yes, sir; I did not count them, but it looked like there were seventy or eighty.

Q. Was the hotel or boarding-house where you kept the box lighted up or in the dark ?—A. The house was kept lighted all the time.

Samuel C. Tucker swears :

We decided to go to supper; that is, the inspectors and the United States supervisors, Edward Sammons and Jno. G. Bird. Mr. Flewelling then handed the ballot-box to Virgil George, the Republican inspector, and then we proceeded to Mrs. Burk's to get our supper, all together, the inspectors and supervisors, and we walked over to Mrs. Burk's in the following order, as well as I can recollect: Virgil George, the bearer of the box, walked between Flewelling, one of the inspectors, and Edward Sammons, the Republican United States supervisor, and I walked behind them to the supper-table.

Q. Were you present with any of the inspectors at supper ?—A. I was, until I got through eating.

Q. Where was the ballot-box?—A. While myself and Mr. Flewellen, and I think Mr. Reid, were eating, the ballot-box was in the custody of Virgil George, in our presence, while we were eating, and, to the best of my recollection, Edward Sammons, the Republican United States supervisor, was sitting by the side of Virgil George, the bearer of the box. I then left the supper-house, leaving the parties in the same position as above stated.

Q. What was the character of the election held at Arredonda on that day?—A. It was of a most quiet and peaceable character.

The law of Florida provides that "as soon as the polls of an election shall be finally closed the inspector shall proceed to canvass the votes at such election, and the canvass shall be public and continued without adjournment until completed." (Pamphlet laws of 1877, sec. 21.)

It was illegal therefore for the election board to adjourn before completing the canvass of the votes. But unless the adjournment is shown to have afforded the facilities for fraud, or that during it the box was concealed and tampered with, there is no reason why the adjournment should operate to taint or discredit the poll. There is no witness pretends that any fraud was committed during the adjournment. The box was taken by the officers of the election from the polls to the boarding-house with a large crowd following as witnesses. It was kept in the custody of one of the officers of the election, watched by one or more of the other officers all the time in a public, open, well-lighted room. The testimony of Mr. Sammons and Mr. George is conclusive on the point that there was no fraud or opportunity for fraud.

But it is contended by contestant that the great falling off in his vote as returned at this poll is evidence of fraud. In answer to this point the contestee cites the proof to show that there was a bitter division in the Republican ranks in the precinct, which satisfactorily accounts for the smallness of Mr. Bisbee's vote.

J. T. Walls, contestant's witness, swears:

Q. Do you know whether or not there were two divisions of the Republican party, headed by separate tickets, for the legislature in Alachua County during the last campaign?—A. There were.

Q. Were you or not a candidate for the State senate on one of those tickets, and the leader of one of those factions?—A. I was a candidate for the senate on one of those tickets, and was the leader of one of those factions.

Q. Do you know the Hon. L. G. Dennis?—A. I do.

Q. Was he or not a candidate of one of these Republican factions above spoken of for the legislature?—A. He was a candidate on what was known as the Rush ticket for the assembly. Rush was a Republican candidate, and was one of my opponents for the senate, and the other was Mr. J. B. Dell, Democratic candidate.

Q. Was or not the Hon. L. G. Dennis an opposer or supporter of Mr. Bisbee for Congress?—A. I suppose he was an opposer, from his speeches made during the campaign, and that was the issue between the two factions, his opposition to Colonel Bisbee.

Q. Do you not know that he denounced Bisbee from the stump during the political campaign in the county?—A. I heard him on several occasions denounce Colonel Bisbee, and have been informed that at other times he spoke in favor of Colonel Bisbee. As to his denouncing him throughout the country, I am unable to say, because I do not know.

Q. Did you not hear or understand that there was during the campaign some endeavor made towards a reconciliation between Bisbee and the Dennis faction?—A. The only information I have on that subject is a letter that Dennis read at a public meeting from Colonel Bisbee, which letter requested Dennis not to speak at that meeting; and, if he did, not to bring up local matters, but he would like to hear from him on State and national questions.

Q. Did or not Dennis continue the fight until the election was over; or did he, yielding to Colonel Bisbee's request, then cease to oppose him after the reading of that letter?—A. The fight was continued until the election was over. The night before the election in the town of Gainesville, as I am informed, and it was generally known that he, at a public meeting, openly denounced Bisbee and stated that he had not supported Bisbee, and advised his friends not to do so.

Q. Do you believe that L. G. Dennis, and do you not know that L. G. Dennis, or any one else, could not make that an issue in this county at the polls successfully in

the last campaign?—A. I believe and know that L. G. Dennis and others opposed Colonel Bisbee from the beginning of the canvass until the day of election, but to what extent and influence I do not know.

Q. Did you or not see any Republican tickets at Arredonda on the day of election that did not have Bisbee's name on them as candidate for Congress?—A. I did see some such tickets with Bisbee's name not on them.

W. F. Rice, contestee's witness, swears:

Q. Do you or not know that in the political campaign that preceded the last election in said county of Alachua the Republican party of said county was divided into factions, and that those factions were very much imbibited against each other?—A. It was divided into factions, and there was considerable bitterness against each other.

Q. Was it or not generally known that the Hon. L. G. Dennis was the leader of one of those factions, and J. T. Walls the leader of the other?—A. It was.

Q. Do you or not know, and was it not a matter of public notoriety in the county, that Dennis was an opposer of Mr. Bisbee for Congress, and that J. F. Walls was his supporter?—A. It was.

J. R. Flewellen, contestee's witness, swears:

Q. Were you in Alachua County during the political campaign which preceded said election?—A. I was only here a week preceding the election.

Q. Do you know whether or not the Republican party in said county of Alachua was divided into factions?—A. They were.

Q. State whether or not the leaders of these respective factions were acrimonious and bitter towards each other.—A. They were very bitter.

Q. How do you know?—A. I heard them abusing each other, and at Republican meeting, held in the yard of the United States land office, in Gainesville, on Saturday before the election, the Walls faction of the Republican party spoke very abusively indeed of the Dennis faction of the Republican party. Nearly all of the entire speeches made by the Walls faction were abuses of the Dennis faction. Immediately on the close of their speaking Mr. Dennis rose to go on the platform, and the Walls faction tore it down to keep him from speaking. Also tore down the tables on which the crowd had dined. Mr. Dennis got on a large box, which the Walls faction pulled out from under him. Mr. Dennis had to retire without speaking.

Q. Do you know whether Mr. Bisbee spoke there on that day?—A. I do not know.

Q. Please state whether or not you heard the Republican supervisor, Edward Sammons, and the Republican inspector, Virgil George, make any statement on the day of the election in reference to its probable result, and the cause of such result.—A. About two o'clock each of them told me that they were satisfied that the Democrats had carried the election here, because the colored men had deceived them, and were voting the Democratic ticket. Ed. Sammons remarked that he was perfectly disheartened and ready to give it up. They repeatedly repeated this from that time until the polls closed.

Q. Was there any additional cause of the probable defeat of the Republican party at said polls assigned by them, or either of them, by attributing their defeat to any individual; and, if so, what?—A. They attributed it to L. G. Dennis splitting the Republican party in this county.

Q. Can you state whether or not the Democratic party were before and at the election united and harmonious, or whether they were divided, as you say the Republicans were?—A. They were united and harmonious.

Q. Do you know if Captain Dennis was a supporter or opposer of Colonel Bisbee?—A. I heard Mr. Dennis abuse Colonel Bisbee in very strong terms. He had printed, and caused to be circulated, a full set of tickets with no one's name on it for Congress, which some of said tickets were voted at the Arredonda precinct. These tickets were circulated all over the country, to my certain knowledge.

Q. Were these tickets above spoken of, which you say were blank for Congress, Republican or Democratic tickets?—A. They were Republican tickets.

Q. How do you know that any of these tickets were voted at the Arredonda precinct?—A. I counted them out of the box when canvassing the vote, and saw them to be such.

Q. Can you state whether there were a few or a great many of these tickets in circulation at Arredonda, from your observation?—A. There were a great many.

Samuel D. Reed swears:

Q. Do you know L. G. Dennis?—A. I do.

Q. Can you state whether or not the Republican party of Alachua County, during the last political campaign, when a member to Congress from this Congressional district was to be elected, was divided into factions, or was it solid?—A. It was divided into factions.

Q. Who were the respective leaders of these factions?—A. L. G. Dennis, a Republican, but anti-Bisbee man, was the leader of our faction, and J. T. Walls was the leader of the Bisbee faction.

Q. Do you know whether or not there were a considerable number of Dennis tickets in circulation, and voted at Arredonda at said election?—A. There were a majority of Republican tickets on which Bisbee's name did not appear; they were blank for Congressmen. These were known as Dennis tickets.

Q. Please state how you know that many of the colored voters voted the Dennis or blank ticket for Congress. How many, and, if possible, their names?—A. I don't know how many voted it, nor the names of those who voted it. I only know by seeing the ballots in the box when they were canvassed, and from the fact that the Dennis faction claimed the right to be admitted to the polling-place, and to keep a tally-sheet.

Q. Do you know J. T. Walls?—A. I do.

Q. Was he at Arredonda on the day of election?—A. He was.

Q. Did you see and converse with him on that day?—A. I had a conversation with him that night after the polls were closed.

Q. Was that conversation in regard to the election at Arredonda on that day?—A. It was.

Q. What did he say about that election?—A. I asked him if there had been any irregularities in the election on that day. He said there had not that he knew of or could object to (I forgot what his language was), except that it might be considered irregular for the inspectors to go to supper before they counted the vote.

Virgil George swears:

A. I heard Sammons state on the day of election, about 3 o'clock p. m., that he believed the Republican party was beat, for the reason, as he expressed it, that a great many negroes were voting the Democratic ticket; also that Dennis was stronger than he thought for.

Q. Was said Supervisor Sammons a Republican or Democrat?—A. He was a Republican.

Q. Was the Republican party united in the last campaign, or was it divided into factions?—A. It was not united; it was badly divided.

Q. Who were the leaders of those respective divisions or factions?—A. Mr. Walls was a leader of one part, and Mr. L. G. Dennis the other.

Q. Can you state whether or not these factions were very bitter against each other during the last campaign?—A. It seems that they were.

Q. Did you attend any Republican political meetings during the last campaign?—A. I did.

Q. Were there or not, within your knowledge, any Republican clubs in the county?—A. Yes, sir; there were.

Q. What were they called?—A. The Garfield Club.

Q. Did you belong to or attend any of them?—A. I did not.

Q. State whether or not, if you know, Mr. Dennis was a supporter or opposer of Mr. Bisbee for Congress? How was he regarded?—A. I understood, but did not hear him say so, that he was opposed to Mr. Bisbee.

Q. Did you or not, during election day at Arredonda, in the afternoon of that day, hear the Republican supervisor, Edward Sammons, express any apprehension or fears that the Republican party would be beat?—A. I did, sir.

Q. To what cause did he attribute it?—A. He said that he felt that we were getting beat, and seemed very much disheartened, and spoke of the party being split up, and assigned that as a cause.

Q. Were you present at the canvass of the vote at Arredonda?—A. I was.

Q. State whether or not, if you recollect or observed, there were any Republican tickets in the box which did not have Mr. Bisbee's name on them for Congress?—A. There were some there, but cannot say how many—did not keep any count.

Samuel C. Tucker swears:

Q. Do you know whether or not the Republican party during the political campaign which terminated in the late Presidential and Congressional election, the Republican party in Alachua County, Florida, was united or divided?—A. They were materially divided.

Q. State who were the respective leaders of the factions of the Republican party of said county.—A. They were denominated here as the Dennis and Walls factions.

Q. Do you know, or was it a matter of public notoriety during the late campaign, that Dennis was a supporter or opposer of Mr. Bisbee for Congress?—A. He was not a supporter of Bisbee, and it was generally believed that he exercised every effort in his power to defeat him.

Q. Were there any tickets in that ballot-box at the time of the canvass which were Republican tickets, that did not contain the name of Mr. Bisbee for Congress?—A. I

had no access to the box, and consequently had no opportunity of knowing, only as the inspectors called them out, but I saw a good many tickets of that character during the day distributed around.

Amos George, a colored voter, swears:

Q. Are you a registered voter of Alachua County, and were you such at the election held in November last?—A. Yes, sir.

Q. What was the character of that election; was it a peaceable and quiet election, or was it otherwise?—A. It was as quiet election as I ever saw.

Q. Do you know Edward Sammons?—A. I do.

Q. Did he act in any official capacity at the late election in November last?—A. Not that I know of.

Q. Can you state whether or not there were a good many supporters of the Dennis ticket at Arredonda at said election?—A. I do not know.

Q. Did you or not hear Edward Sammons say anything about said election? State what you heard him say.—A. I heard him say after the election was over he went to Gainesville, and the women wanted to jump on him and fight him for telling the negroes to vote the Democratic ticket. He told them that he could not help it; that is what I heard him say.

Q. Did he say anything further?—A. Not as I know of.

Q. Are you a colored man or white man?—A. I am a colored man.

Q. Did you or not vote the Democratic or Republican ticket at the last election?—A. I aimed to vote the Democratic ticket.

Q. How long have you been a Democrat?—A. I have been a Democrat all my days.

This testimony shows that there were two candidates for the office of State senator—Mr. Walls and Mr. Dennis—running in this district; that they headed very bitter and earnest and hostile factions of the Republican party; that the Walls faction favored Mr. Bisbee, but that the Dennis faction was very much opposed to him; that the fight was carried down till the close of the election; that Mr. Dennis, at this poll, received just the same number of votes which Mr. Bisbee fell behind his ticket; that Mr. Dennis's tickets did not have Mr. Bisbee's name on.

Julius A. Carlisle swears that—

Having counted the ballots, there were three hundred and thirty in the box.

Q. Please examine, ascertain, and state if there are any Republican tickets that are blank for member to Congress; and, if so, state how many.—A. Witness having examined states there are (85) eighty-five.

Q. Please examine, ascertain, and state the number of ballots in the box for Jesse J. Finley for Congress.—A. The witness having examined the ballots, states: "There are one hundred and seventy-two votes for Jesse J. Finley for Congress."

Q. Please examine and state how many votes there are in said box for Horatio Bisbee, jr., for Congress.—A. The witness having examined the ballot-box states: "There are sixty-eight (68). There are also five Republican tickets with Horatio Bisbee, jr.'s name scratched."

Q. Please examine and state the number of votes for the Republican electors.—A. The witness having examined the ballots states: "There are one hundred and forty-eight (148) ballots for the Republican electors and two Republican tickets with the Republican electors scratched."

Q. Please examine and state the number of votes or ballots for the Democratic electors.—A. Witness having examined the ballots states: "There are one hundred and seventy-two (172) ballots for the Democratic electors."

Q. Please examine and state the number of ballots in the box for the Democratic candidate for governor.—A. Witness having examined the ballots states: "There are one hundred and seventy-two votes for the Democratic candidate for governor."

Q. How many votes do you find for the Republican candidate for governor?—A. Witness having examined the ballots states: "There are one hundred and forty (140) votes for the Republican candidate for governor, and 17 scratched, and one with the name of the candidate for governor torn off.."

Q. Please examine the eighty-five Republican tickets which you say are blank for Congress, and state whether Leonard G. Dennis' name appears on them, or any of them; and, if so, how many?—A. Witness having examined those ballots states: "They all have the name of Leonard G. Dennis on them."

Q. For what office?—A. For a member of the assembly.

The evidence, on pages 398-399, shows 330 ballots in the box. The votes for governor shows—

| | |
|------------------------------|-----|
| For Bloxham, Democrat..... | 172 |
| For Conover, Republican..... | 140 |
| Scratched..... | 17 |
| One with name torn off..... | 1 |
| | 330 |

Making the vote for governor equal to the *number of ballots in the box*.

Again, on the Congressional ticket, the evidence shows—

| | |
|-----------------------------|-----|
| For Finley..... | 172 |
| For Bisbee..... | 68 |
| Blank (Dennis's vote) | 85 |
| Scratched..... | 5 |
| | 330 |

In response to this testimony the contestant has called and sworn 260 persons who say they voted for him at this poll. But this is contradicted, first, by the fact that Mr. Dubose, the president of the Republican club at the place, swears there were only 164 members of that organization, which is about the number of votes polled by the Republicans; second, by the fact that only 140 voted for the Republican candidate for governor; third, by the fact that the proof proves too much. If 260 voted for Mr. Bisbee, which is the full vote for Congress, what becomes of the large vote concededly cast for Mr. Finley? But there is a grave objection to the testimony of voters to show the true state of a poll in such a case as this, and surrounded by such circumstances. The voters were mostly illiterate and could not read their tickets, and the Dennis Republican ticket did not have Mr. Bisbee's name on it. How could they say any more than that they voted the Republican ticket? Besides, not only are political leaders liable to conceal their cutting a party ticket, but ignorant voters, who would incur the odium of their neighbors for admitting a deviation from the party paths, are also likely to deny the fact, and particularly when they have the additional shield for their consciences that they may not and perhaps cannot know certainly how they voted. Besides, if it is true that the full Republican vote was cast for Mr. Bisbee at Arredonda, and that Mr. Dennis did not cut him to the full extent of his power, why is not Mr. Dennis, a prominent Republican, called? If Mr. Bisbee really believed that Mr. Dennis and his faction did not cut him, the clear, well-defined, and intelligent course would have been to call and swear him. Then what we now see through a glass very darkly we could have seen face to face. But Mr. Bisbee did not call this prominent Republican, Mr. Dennis—the little giant of Alachua—and I believe he had a good reason for the omission—I believe the preponderance of the evidence shows that the election at Arredonda was a fair and just expression of the voters as they actually cast their ballots. It is utterly immaterial to this contention whether they intended to vote otherwise than they did. If Mr. Dennis got his work in by voting tickets without Mr. Bisbee's name on, we cannot allow the persons who cast them to vote over. In the case of Biddle & Richard vs. Wing, Nineteenth Congress, which was one of the best-considered cases ever decided by the House of Representatives, the committee very appropriately say on this point: "The committee are of opinion that the duty assigned to them does not impose on them an examination of the causes which may have prevented any candidate from getting a sufficient number of votes to elect him to

the seat. They consider that it is only required of them to ascertain who had the greatest number of legal votes actually given at the election."

But suppose we admit, for the purposes of the further discussion of this point, that there are some evidences of irregularity and illegal and improper conduct on the part of the officers of the election at Arredonda, we must then inquire what is the amount of irregularity, and what is the character of the improper conduct on the part of said officers required by the law to vitiate and set aside the return, and permit *aliunde* proof of the votes cast?

The law on this subject is very fully and clearly laid down by Mr. McCrary in his work on Elections, sec. 302, wherein he states that mere irregularity does not vitiate the return, but only where the provisions of the election law have been entirely disregarded by the officers, and their conduct has been such as to render their returns utterly unworthy of credit, the entire poll must be rejected. In such case the return proves nothing, but the legal votes cast at such poll may be proven by secondary evidence; but he states very clearly that the return, until so impeached, is the primary evidence. In support of the doctrine of this section (302) he cites 1 Chicago Leg. News, 230; Brightley's Election Cases, 493; McKenzie *vs.* Braxton, Forty-second Congress, and Giddings *vs.* Clark, *ibid.*

In section 303 of the same book it is said: "The power to reject an entire poll is certainly a dangerous power, and should be exercised only in an extreme case—that is to say, where it is impossible to ascertain with reasonable certainty the true vote. It must appear that the conduct of the election officers has been such as to destroy the integrity of their returns and to avoid the *prima facie* character which they ought to bear as evidence before they can be set aside and other proof demanded of the true state of the vote." In support of this doctrine three cases are cited from 1 Brewster, viz, Mann *vs.* Cassiday, Thompson *vs.* Ewing, and Weaver *vs.* Givin, and the case of Gibbons *vs.* Stewart, from 2 Brewster.

In section 304 of McCrary, the language of the supreme court of Pennsylvania, in Chadwick *vs.* Melvin, is quoted, which declares "that there is nothing which will justify the striking out of an entire division but an inability to decipher the returns, or a showing that not a legal vote was polled, or that no election was legally held." The case of Riddle and Richard *vs.* Wing, *supra*, is also cited as giving the correct doctrine, which holds: "Indeed nothing short of the impossibility of ascertaining for whom the majority of votes were given ought to vacate an election." (See also McOrary, 436, 437, 438.) Under the law, as laid down in these citations, does the evidence justify the rejection of this poll? Have all the provisions of the election law been entirely disregarded by the election officers; and are the returns utterly unworthy of credit? Is it impossible to ascertain with reasonable certainty what the true vote is, and is it necessary to exercise the dangerous power of rejecting the poll, which the law says should only be done in extreme cases? We think not. But in addition to the provisions of the law, which declare what kind and amount of proof of fraud and illegality are required to reject a poll, the contestee very properly refers also to those presumptions which the law always throws around sworn officers, and those equally important presumptions of law, which are always in favor of innocence and right and against fraud and wrong. It is a well-settled and fundamental principle of law that in all cases and at all times, all presumptions are against fraud and in favor of fairness

Fraud is never presumed, even from suspicious circumstances. When charged it must be proved. It is unnecessary to cite authorities in support of this. What is done by sworn officers in the pursuit and discharge of their duties is always presumed to be rightly done, and nothing but clear and convincing and unequivocal proof can destroy the credit and validity of their official acts. (See McCrary, section 87, &c.; see also Skerrett's case, Brightley's Leading Cases on Elections, page 820 and page 333, where the court holds this language: "What has been done by the sworn agents of the law is always to be presumed rightly done; and those who seek to impeach the acts of these functionaries must not expect to be entertained if, instead of bringing positive, tangible, and direct charges, they content themselves with general, argumentative, and theoretic imputations.")

THE NEWNANSVILLE POLL.

This poll is assailed on the charge of fraud, and contestant asks that the return be rejected as evidence, and that no votes shall be counted for either party except such as have been proven by testimony *aliunde* the return.

The return gave Mr. Bisbee 150 votes and Mr. Finley 146 votes. What is the fraud charged against the return upon which it is asked to reject it?

First. That 29 more votes were found in the ballot box than there were names on the poll-list.

Second. That one witness swears that "we found two tickets folded together; we cannot tell whether they were so when they were put in or not."

Third. That in drawing out the excess of tickets in the box in conformity to law there may have been more Republican votes extracted than Democratic.

To show on what a frail foundation the contestant proposes to base his case in this instance, we will reproduce the whole testimony of his own witness, Edward Taylor, who was the Republican manager at this poll.

EDWARD TAYLOR, a witness produced and sworn, testified as follows:

Question. What is your name, place of residence, and color?—Answer. My name is Edward Taylor; I live in district No. 3; I am a colored man.

Q. Are you a registered voter of Alachua County, Florida?—A. Yes.

Q. Did you vote at the election held on the 2d of November last; if so, what ticket did you vote, Democratic or Republican, and where did you vote?—A. I voted at Newnansville; I voted the Republican ticket.

Q. Did you vote for member of Congress for the second Congressional district of Florida at the last election, and for whom did you vote?—A. I did; I voted for Horatio Bisbee.

Q. Did you hold any official position at that election; if so, what was it?—A. Yes; I was one of the managers of the box at Newnansville.

Q. Were you, or not, present all day at that election when the votes were polled?—A. I was present all day, during the voting, and the counting of the votes after the polls were closed.

Q. Do you, or not, know of any ballots being taken out of the ballot-box? If so, state fully all you know about it.—A. We first proceeded to count the votes one by one. Mr. Hodge, one of the inspectors, counted the votes first; then I counted them. Mr. Hodge counted one hundred and fifty and I counted one hundred and seventy-one. Then we put them in the ballot-box and stirred them up; we went and tore up and destroyed all the ballots more than there were names on the tally-list; there were twenty-nine more tickets in the box than there were names on the tally-list.

Q. How did it happen that there were twenty-nine ballots more in the ballot-box than there were names on the tally-list?—A. We cannot exactly account for it; we

found two tickets folded together; we cannot tell whether they were so when they were put in or not.

Q. When these twenty-nine ballots were taken out of the box were they folded up, or were they open?—A. Twenty-one of them were folded; eight were opened.

Q. Do you know, of your own knowledge, whether these tickets that were destroyed were Democratic tickets or Republican tickets? State fully.—A. There were some of each.

Q. How many Democratic tickets were there, and how many Republican tickets were there taken out and destroyed?—A. I can't tell how many of each there were taken out; I know there were some each.

Q. Who took these twenty-nine tickets out of the box and destroyed them?—A. Geiger took out twenty-one and I took out eight.

Q. When these twenty-nine tickets were taken out of the box were they folded, or could it be plainly seen what they were, Democratic or Republican?—A. When we drawed the twenty-one they were folded; when we drawed the eight they were unfolded.

Q. Do you know whether the eight tickets you took out of the box were Democratic or Republican?—A. There were some of each.

Q. How many of each? State if you know.—A. The twenty-one tickets were torn up; the eight were burned. I took them up to light my pipe with, and I saw the face of them, and five of the eight were Republican tickets and three of them were Democratic.

Q. Did you see the two tickets that were folded together, so as to tell what they were, Democratic or Republican?—A. Yes, I saw them; they were Democratic tickets.

Q. Did the Republicans of this district have an organization or club during the campaign last fall?—A. Yes; I don't know how many belonged to it.

Q. Is it not true that the election held on the 2d day of November, at Newnansville, was conducted fairly and legally, and without any fraud whatever?—A. Yes, sir; as far as the managers were concerned.

Q. State whether or not, when the votes were counted, the managers canvassed them with the utmost fairness without regard to political character, and in the destruction of the overplus ballots cast they were drawn from the box by and with the consent of each inspector without any knowledge as to whether they were Democratic or Republican ballots, and whether or not the destruction of said ballots was done for the purpose only of making the tally-sheet of voters correspond to and with the number of ballots cast?—A. They were.

Q. State whether or not any legal voters were rejected from the polls. On the contrary, was not every voter at said precinct who was legally authorized to do so permitted to cast his ballot quietly and peaceably?—A. They were.

Q. State whether or not the election at said precinct on said day was quiet, peaceable, and orderly.—A. It was.

Valentine, a deputy marshal, one of contestant's witnesses, who was a political friend and supporter of contestant, swears, on p. 26 of the Record:

Well, the votes were counted out, and then there was more votes in the ballot-box than there was names to balance with; then the votes was all put back into the ballot-box, and shaken together, and then they put their hand into the box and took out, I think, twenty-nine votes to make the number even on the list. I thought they tried to do it fair.

This witness further testifies that there were several counts of the votes and several drawings from the ballot-box to make the number of ballots in the box correspond with the number of names on the poll-list, as the law requires. He further testifies, on same page, 26 of Record:

I do not know whether they (the ballots in excess) were Democratic or Republican; they were not looked at. As far as I could see, everything went right, excepting one man was objected voting, but they let him vote; that was all I see.

In connection with this testimony we cite the law of Florida applicable to the subject, which provides:

As soon as the polls of an election shall be finally closed, the inspectors shall proceed to canvass the votes cast at said election, and the canvass shall be public and continued without adjournment until completed.

The votes shall be first counted; if the number of ballots shall exceed the number of persons who shall have voted, as may appear by the clerk's list, the ballots shall be

replaced in the box, and one of the inspectors shall publicly draw out and destroy, unopened, so many of such ballots as shall be equal to such excess.

The testimony of the contestant himself shows that the excess of ballots in the box were drawn out under the supervision and with the consent of both inspectors, and strictly in accordance with the law which, instead of implying fraud from such an excess, attributes it, in conformity to the spirit of common sense and fairness, to the mistakes of the clerks or electors. It is shown that the election was conducted fairly and legally, and without any fraud on the part of the officers of election; that the votes were fairly and honestly canvassed and counted; that every legal voter was permitted to vote; that the election was quiet, peaceable, and orderly. We have no hesitation in saying that the claim of the contestant to throw out the whole vote of the contestee at this poll and count the whole vote of the contestant, in view of the testimony and the law, is the boldest and most unwarranted demand that has ever been made of a committee of elections in all the diversified annals of election cases. If a return such as this, made regularly in all respects by sworn officers, and surrounded, therefore, by all the strong presumptions of honesty and integrity which attach to sworn official action, and corroborated and confirmed further, and almost overwhelmingly, by the testimony of the intelligent Republican manager who helped to conduct the election, and was the watcher of the interests of that party; if such a return is to be overturned and destroyed by the uncorroborated and partisan testimony of one person, a clerk in the government land-office, then there may as well be an end of election contests.

THE PARKER'S STORE POLL.

The official return of this poll gave Mr. Bisbee 151 votes and Mr. Finley 155 votes.

The contestant, without one scintilla of testimony in the remotest way attacking or assailing the correctness of this return, proposes to throw it out. He assumes, without any evidence, that it is fraudulent. The law says until it is impeached by clear and convincing proof it is itself the primary evidence of the vote, and that until it is so impeached and vitiated and rendered worthless as evidence, no other evidence of any kind, either of the voters or otherwise, can be introduced. It is hardly worth while to debate such a proposition as that of the contestant in this instance. If he is right the primary and fundamental rule of evidence is abrogated and destroyed. But he not only proposes to override the laws of evidence, but he proposes to violate the plainest principles of common fairness and to throw out all of contestee's votes and count more than all his own.

BREVARD COUNTY.

The contestant insists that the election in this county is illegal and void on the following grounds:

1st. There were no registration books provided and used in the county, and no legal registration of the electors, as required by law.

2d. From some of the polls the certificates of the result of the election were sent in to the clerk of the court by mail instead of being carried in by an officer of the election, as the law provides.

3d. Because there were nearly one hundred more votes returned than there are names on the informal and illegal registration lists used at the election.

Section 7 of the amended statutes of Florida of 1877 provides, *inter alia*, for "a well-bound and suitable book," in which shall be written or printed the oath required to be taken by electors. This book is the general registration book for the entire county, and in it the names of all the voters, with the *date of registration*, must appear. In addition to this book the law requires a separate registration book for every election district into which the county is divided. (Section 8, Laws of 1877.)

In support of the foregoing objections to the returns from Brevard County the contestant relies upon the following testimony, taken by himself, *ex parte*, without notice, and out of time:

J. A. McCRARY (Rec., 404, 405), being duly sworn, testifies as follows:

Question. What is your name, age, official position, and place of residence?—Answer. My name is James A. McCrary; aged 26 years; county judge and deputy clerk of court; residing at Titusville.

Q. How long have you held each office?—A. I have been deputy clerk since August, 1880, and county judge since March, 1881.

Q. Where is the county site of Brevard County, and what election district is it in?—A. Titusville; election district No. 2.

Q. What is the entire number of election districts in Brevard County?—A. There is twelve election precincts or election districts.

Q. Has any of those election districts been established since November 1, 1880?—A. No, none.

Q. Have you read and are you acquainted with that provision of the election laws of Florida prescribing a certain form of registration book to be used by registration officers?—A. Yes.

Q. Has that book in the form prescribed been provided for or by or used in Brevard County?—A. No; not to my knowledge.

Q. To your knowledge were deputy clerks or registration officers appointed by the clerk of the court in each of the several election districts on the first Monday in October, 1880, or thereafter during that month?—A. They were appointed, but I cannot swear to the time or date.

Q. Were those registration officers appointed for every precinct?—A. To the best of my knowledge they were.

Q. Were lists of the electors registered by those officers during the month of October, 1880, returned to the clerk's office before the day of election?—A. To the best of my knowledge some were and some were not.

Q. Were the lists so returned bound in book form or upon loose sheets of paper?—A. On loose sheets of paper.

Q. Was there written or printed upon any or all of those lists so returned at the time of their return an oath to this purpose or effect: "I do solemnly swear to well and truly perform the duties of deputy clerk and registration officer according to the requirements of the constitution and laws of Florida, so help me God"?—A. To the best of my recollection it was on some, and on some it was not.

Q. Were there written or printed upon any or all of these lists so returned at the time of their return an oath to this purport or effect: "I do solemnly swear that I will support, protect, and defend the Constitution and the Government of the United States and the State of Florida against all enemies, foreign or domestic; that I will bear true faith, loyalty, and allegiance to the same, any ordinance or resolutions of any State convention or legislature to the contrary notwithstanding, so help me God"?—A. To the best of my recollection it was on some, and on some it was not.

Q. Was there written or printed upon any or all of those lists so returned any heading or certificate showing that they were lists of registered voters, and showing the number or name of the election district or precinct from which the said lists came?—A. There was on some, and on some there was not.

Q. From what election precincts or districts were lists of registered voters not returned by the registration officers?—A. To the best of my knowledge they were precincts west of the Saint John's River.

Q. Were poll-lists returned from any precinct with the returns of the election?—A. Yes.

Q. By whom were the returns of the election of the various precincts brought to the clerk's office?—A. To the best of my recollection they were brought by inspectors of the elections from all the precincts but two.

Q. What two precincts were those, and in what way did the returns come to the clerk's office from those precincts?—A. The returns from precinct Fort Drum (No. 11), and Fort Prince (No. 5), was sent by registered letter through the mail.

It will be observed that Mr. McCrory only became deputy clerk in August, 1880, and the election was in November. He does not swear that no registration book had been provided and used in Brevard County, but says there was none to his knowledge. He swears to the best of his knowledge that the registration officers were appointed, and that to the best of his knowledge some of the registration lists were returned to the office and some not. He swears also that those returned were on loose sheets of paper, but they were the lists. He swears all through only to the best of his knowledge, which is very natural for a young officer acting only as deputy and for so short a time. But there is the testimony of the sheriff on this subject introduced by the contestant:

W. F. RICHARDS, being duly sworn, testifies as follows:

Question. What is your name and what official position do you hold?—Answer. My name is W. F. Richards, and am sheriff of Brevard County, State of Florida.

Q. Did you receive from the clerk of court of Brevard County, a few days before the last general election, certain ballot-boxes and lists of registered voters to be delivered to the inspectors at the different election precincts?—A. I did.

Q. Did you deliver, or cause to be delivered, at each and every precinct, its proper box and list of registered voters before the opening of the polls on the day of election?—A. I did at all, except at the Fort Prince precinct (No. 5), which I was unable to reach in time.

He swears that he delivered to every precinct but one, Fort Prince precinct, No. 5, the proper box and *list of registered* voters before the opening of the polls on election day. Therefore every precinct but the one omitted had all the papers necessary to hold a legal election.

Now, the contestant has put in evidence the general returns for Brevard County, and all the precinct returns properly certified, including Fort Prince precinct, No. 5. These returns will be found in the record from pages 1085 to 1102. The returns from Fort Prince precinct will be found on page 1102, and show that Mr. Bisbee received 8 votes and Mr. Finley received 9 votes. If, therefore, the vote of this precinct is illegal it can very easily be ascertained and deducted.

The contestant also put in evidence the general return of the county, which is found on page 1085 of the record, and to which is appended the following certificate:

STATE OF FLORIDA,
County of Brevard:

I hereby certify the above is a true and correct copy as shown on the records in the clerk's office, at Titusville, Brevard County, Florida.

In witness whereof I set my hand and the seal of my office this the 27th day of December, A. D. 1880.

A. A. STEWART,
Clerk Circuit Court in and for said County and State.

He also put in evidence a certified copy of the general registration book, which will be found on page 1090 of the record, and to which is appended the following certificate:

Registration list of Brevard County.

STATE OF FLORIDA,
County of Brevard:

I hereby certify that this is a true and correct copy of the registration book now in this office.

In witness whereof I hereunto set my hand and affix my seal of office, this the 27th day of December, A. D. 1880.

[SEAL.]

A. A. STEWART,
Clerk Circuit Court in and for said County and State.

This certified list contains the names of 350 voters. The general re-

turn shows that Mr. Finley received 222 votes and that Mr. Bisbee received 74 votes.

All this testimony was taken by the contestant *ex parte* and without notice, but it shows that there was a substantial compliance with the registry law, and that the voters should not therefore be disfranchised because of the neglect of the officers who may have failed to furnish in all cases the proper registration lists. This is the law plainly laid down in Wheelock's case (1 Norris, 297), which was decided in Pennsylvania under a statute like the one in Florida. In Wheelock's case it appears that the general registration list had been made, and was on file in the commissioner's office, but there was no registration list at all at the polls. In that case the supreme court say:

To disfranchise all the voters of a township, as we are asked to do in this petition, the facts on which we are required to act should show a case free from legal doubt. If we, by our decision, should permit the carelessness or even the fraud of officers whose duty it is to furnish a list of voters at the elections to defeat the election and deprive the people of the county of the officer who was elected by a majority of their votes, we would thus make the people suffer for an act in which they did not participate and which they did not sanction. In so doing, instead of punishing an officer for the violation of the election law we practically punish the voters of the county by defeating their choice of a county officer as declared at the election. A decision of this kind would be fraught with danger by inciting unprincipled or unscrupulous persons on the eve of an important election to recreate or destroy the list of voters or other important papers in a township in which the majority may determine the result in the county. Rules applicable to contested elections, like other legal rules, must be uniform, and the results and consequences of decisions therefore determine their correctness.

MARION COUNTY.

The contestant claims that 122 votes not cast ought to be added to the returned vote for him from this county on the ground that these votes were illegally rejected.

By reference to this brief, page 35, it will be seen that he attributes this to the erroneous ruling of the election officers in holding that unregistered voters could not vote. The contestee's counsel denies that these votes should be added to the contestant's majority in this county, and states the law on the subject to be as follows, viz:

In order that a vote *not cast* shall be counted as if cast it must appear that a *legal voter* offered to vote a particular ballot, and that he was prevented from doing so by fraud, violence, or an erroneous ruling of the election officers.

The burden of proof of all these facts is upon the party who seeks to have the votes not cast counted for him. It devolves upon the contestant therefore to prove that each one of these voters was a *legal voter*, and that his vote was illegally rejected.

The ground upon which it is claimed and admitted that these 122 votes not cast were rejected was because they had not registered, or their names were not found on the registration list.

The election law of Florida requires registration at least ten days before the election. The law is as follows:

No person shall be entitled to vote at any election unless he shall have been duly registered at least ten days previous to the day of said election, nor shall any one be permitted to vote at any other voting place or precinct than that of the election district stated opposite his name on the county registration list. (See act of legislature of Florida, 1877, pamph., p. 69, sec. 3.)

Prima facie, all persons whose names are not found on the registration list are not legal voters; and in order to entitle them to vote, their names not being on the list of registration, it is incumbent on them to make every preliminary proof which the statute requires.

The election law of Florida, section 7, page 71 (pam. act of 1877), provides as follows:

Should the name of any person who has been duly registered according to the requirements of this act not appear on the registration list of the election district in which he resides, he shall, on offering to vote at the voting place or precinct in such election district, be required to state under oath that he is twenty-one years of age; that he has resided in the State of Florida one year, and in the county six months; that he was duly registered at least ten days before the election, and that he has not changed his place of residence to any district other than the one in which he was living when he registered, or if he has changed his place of residence since such registration, that he notified the clerk of the circuit court of the fact of such change in accordance with the requirements of the first section of this act. *He shall also be required to produce two qualified electors of the election district in which he offers to vote, who shall be personally known to at least two of the inspectors, and who shall each declare under oath that such person does live in the election district in which he offers to vote, and has resided, to their knowledge, in Florida one year, and in the county six months, next preceding the election: whereupon the vote of such person shall be received.*

The Record, from p. 410 to p. 672, which is offered by contestant to establish this list of votes (as claimed by his brief from p. 37 to p. 41), does not show that they made this *preliminary proof* as required by the above section of the law, nor that they offered to make such proof. In addition to this, contestee's counsel insists that the evidence of contestant referred to is that of unlettered and unreliable witnesses, conjectural and hearsay in its character, and not such evidence as should overcome the legal presumption that the election officers did their duty, especially when no fraud is charged or proven.

The Record, pp. 531 and 532, gives a list of such of contestant's witnesses, amounting to 97 of the 222 votes not cast, which he claims ought to be added to his vote in Marion County, the proof of whose illegal rejection depends entirely on *ex parte* affidavits, which affidavits will be found in the Record from p. 562 to p. 672. These affidavits are not competent evidence, and they do not show that these parties offered to make the oath required by the State of Florida (sec. 7 of the act of 1877), or that they were legal voters.

But whether these votes were rejected properly or improperly, it is very plain that, having been rejected, under the law they cannot be counted unless each voter has adduced in the contest the same proof in every respect which would have entitled him to vote at the polls on the day of election. What then would have been required of each one of these voters whose names did not appear on the registry list? The law says that each one "shall, on offering to vote at the voting place or precinct in such election precinct, be required to state under oath: (1) that he is twenty-one years of age; (2) that he has resided in the State of Florida one year, (3) and in the county six months; (4) that he was duly registered at least ten days before the election; (5) and that he has not changed his place of residence to any district other than the one in which he was living when registered, (6) or if he has changed his place of residence since such registration that he has notified the clerk of the circuit court of the fact of such change. These are six requirements which are necessary and indispensable to the legal qualification of any person whose name is not on the registration list. The testimony is not very clear what the rejected voters in this instance offered to do at the time they proposed to vote on the day of election. If they were ready and willing to swear to all these six matters, then they should have been allowed to vote. There is no doubt about this. But having been refused by the election board, although wrongfully, can they be counted now unless they have subsequently made the same proof during the contest and have it now before the committee? We think not. The

proof which has been offered in all the various cases does not in any case, so far as we have been able to discover, come up to the requirements of the law. These votes, therefore, although it is possible they may have been and are now legal votes, must be rejected. We cannot ignore any one of the muniments of the electoral privilege, which should be guarded as well to keep out illegal votes as to insure the right to those who are entitled to vote under the law.

MARION COUNTY.

Moss Bluff poll.

Contestant claims that fraud was committed at this poll by counting votes for contestee which were not cast.

In Marion County reject return at Moss Bluff poll and deduct Finley's majority, 59.

To prove that contestee's name was not on the ballots reference is made to the testimony of William A. Meadows, United States supervisor. (Rec., pp. 513, 516; George Setters, Rec., pp. 516, 518; C. H. Heath, Rec., pp. 518, 519.)

The evidence of contestant to establish this fraud is not sufficient.

The testimony upon which contestant relies to reject this poll is that of William A. Meadows, a supervisor, George Sellers, an unlettered colored man, and Caleb H. Heath, a United States deputy marshal. (See Rec. from p. 513 to p. 519.)

None of them swear that there was a single Democratic ticket in the box which did not have contestant's name on it for Congress, when the act of Congress requires them to do so. (See secs. 2017, 2028, Rec.)

If these tickets, voted by the Democrats, did not have Finley's name on them for Congress, is it not strange that these partisan Republicans, the supervisor and deputy marshal, should stand there and not examine the tickets as they were publicly canvassed by the inspectors?

Meadows, the supervisor, swears that he did not examine but one Democratic ticket, and that he does not know that it was voted. Sellers swears, and so does Meadows, that the votes were counted openly, honestly, and correctly. (See Rec., pp. 514 and 518.)

The contestant only proves that on a table near by there were a number of Democratic tickets which did not have Finley's name on them for Congress, but were blank for Congress. He does not prove that any of these tickets were voted. To suppose that all the Democratic tickets which were voted at the Moss Bluff poll did not have Finley's name on them for Congress, without proof of that fact, and that they were counted by the sworn officers of the election as though his name was on them, would be to *suppose or infer* a crime on the part of these sworn officers *without proof*, and even without probability. This would be in gross violation of the principle of law which presumes that the officers performed their duty honestly and legally. The claim of the contestant to throw out all the returned vote for Finley from the "Moss Bluff" poll in Marion County is too ridiculous to admit of argument.

McCravy says, in section 371, "when a vote has been admitted, something more is required than to throw doubt upon it." The evidence of contestant is not sufficient even to raise a doubt.

NASSAU COUNTY.

Section 108, Revised Statutes United States, provides as follows:

The party desiring to take a deposition under the provisions of this chapter shall

give the opposite party notice in writing of the time and place of taking testimony, &c.

Section 125 of the Revised Statutes United States, provides that—

The notice to take depositions, with the proof or acknowledgment of the service thereof, and a copy of the subpœna, where any has been served, shall be attached to the depositions when completed.

We have carefully examined the record, and find no notices as required by the acts of Congress referred to. And their absence is not accounted for. (See record, from p. 798 to p. 817.)

None of the testimony from this county can therefore be considered, and the vote must stand as returned.

BRADFORD COUNTY.

The contestant asks that 87 votes be deducted from Finley's vote in this county, on the ground that the voters were not registered.

His notice of contest in this county is as follows:

BRADFORD COUNTY.

That in this county, at each poll in said county, five Republican voters offered to vote for me, whose votes were refused; that five Republican voters at each poll were prevented from voting for me by fraud, intimidation, violence, and threats of violence; that five persons voted for you who were non-residents, and five other persons voted for you at each poll who were minors, and five other persons voted for you at each poll who had been convicted of an infamous crime, and five other foreign-born persons voted for you at each poll without producing their naturalization papers. That at Starke poll, in said county, your political friends, by fraud, violence, intimidation, threats of violence, discharging fire-arms, and other acts of lawlessness and disorder, on and immediately preceding the day of election, overawed and terrorized Republican voters and intimidated them from coming to the polls, and thereby affected the result of the said election at said poll. I shall ask that the returns from this poll be rejected as evidence of the vote cast, and the election be set aside.

From the above notice of contest it will be seen that the ground of *non-registration* is not embraced in his pleading. There is not even an allusion to this ground. And this is the only ground with which contestant undertakes to assail Bradford County.

Aside from the fact that the evidence relied on by contestant is wholly inadequate (being altogether *inferential*), we cannot set the dangerous precedent that a party to a contest can disregard his pleading and prove that which he does not pretend to allege. Besides, the record shows that there was no original testimony taken in this county, and that the contestant took all his testimony in the ten days allowed for taking testimony in *rebuttal* when there was nothing to rebut.

The vote of Bradford County must unquestionably stand as returned.

ORANGE COUNTY.

Mellanville poll.

The contestant claims that 33 Republican electors duly offered to vote and that their votes were illegally refused at this poll.

By examination of the record as to this county, from p. 748 to p. 764, we find that there is no notice to take testimony attached to the depositions in accordance with the requirements of section 125 of the Revised Statutes of the United States. No evidence in this county can be considered.

The record also shows that none of the 33 voters, who, it is claimed

were not allowed to vote because their names did not appear on the registration-list, tendered the proof required by section 9 of the election laws of Florida above quoted as to Marion County. And hence, not being shown to be *legal* voters by the laws of Florida, they cannot be added to contestant's vote.

ORANGE COUNTY.

Fort Christmas poll.

It is claimed that the whole vote of this poll should be rejected on the ground that the precinct return does not show that it was signed by the inspectors of this poll. There is no fraud alleged as to this omission.

The contestant makes the proof by the parol evidence of a single witness that the returns from this poll were included in the county canvass. This is not the best evidence, yet, if we take it as admissible evidence, the presumption of law is that the county canvassers properly and legally admitted the returns from this poll in the absence of proof to the contrary. The election laws of Florida require that the poll-list, the oaths of the inspectors and clerk, and the registration list of the precinct be returned, as well as the certificate of the vote, by the precinct officers. From some or all of these papers it might well appear to the board of county canvassers that the returns from any given precinct were authentic.

It would be against the well-established law to reject this poll on that ground. Nothing can be more familiar than the rule laid down by McCrary, sections 87 and 91 :

It is well settled that the acts of public officers within the sphere of their duties must be presumed to be correct until the contrary is shown.

It is presumed that the county canvassing board properly canvassed the vote of this county, there being no evidence to the contrary.

It is further claimed by the contestant that this poll ought to be rejected on the ground of intimidation and violence.

On p. 762 of the Record will be found the evidence which contestant offers to sustain this charge.

There is not a scintilla of evidence in this to show that any voter was intimidated or interfered with or hindered in any way. There is no evidence of any violence or disturbance at this poll.

It follows that Fort Christmas poll, in Orange County, should be counted as returned.

In addition to the above reasons for leaving Orange County stand as returned, we find from the record that all the evidence taken in this county by contestant was "*ex parte*," and taken in the ten days when contestant is allowed by act of Congress to rebut. No original testimony had been taken in said county, and consequently there was nothing to rebut. For this reason also the returns from this county should stand undisturbed.

MADISON COUNTY.

We have already in the commencement of this report disposed of the two polls in this county which contestant in the first point made in his brief claims that the county canvassers of said county failed to include in their county return.

The contestant, in his notice of contest (p. 1 of the Record), charges as follows:

MADISON COUNTY.

In this county the gross fraud was committed by your political friends of stuffing the ballot-boxes with ballots containing your name for Representative to Congress, and drawing out from such boxes ballots containing my name for Representative to Congress, at each of the two polls in the town of Madison, and at each of the several polls in the said county known as Cherry Lake, Hamburg, Greenville, and the two polls at Mosely Hall, and at each of the other polls in said county, whereby I was cheated and swindled out of five hundred or more votes. I shall ask that the returns from each of said polls be rejected as evidence of the true vote cast, and that the votes actually cast for me be counted as cast. I shall ask that the county canvass be rejected.

2d. That at each of the several polls in the county of Madison ten Republican electors offered to vote for me whose votes were illegally refused; that at each of said polls five Republican electors were prevented from voting for me by fraud, violence, and intimidation; that five persons at each of said polls voted for you who were not qualified voters, because of non-residence; that five other persons voted for you at each poll who were minors; and five other persons voted for you at each poll who had been convicted of an infamous crime.

We give below the argument of contestant, quoting from his brief from p. 70 to p. 77, in regard to this county, and after a careful examination of the record we submit that his reasoning is *absurd* and *inconsistent*—that it is neither sustained by the law nor the evidence.

The contestant says in his brief (p. 70):

There were six (6) election districts in this county where Republicans had a majority. The names of these six polls are Madison polls Nos. 1 and 2, Greenville, Mosely Hall No. 4, Cherry Lake, and Hamburg.

Greenville poll.

At the first count of the ballots at this poll there were 39 ballots in excess of poll-list. These 39 being drawn out and destroyed, a second count showed 12 more ballots in excess of the poll-list, making 51 in all. There can be no reasonable ground to doubt that all of the 54 ballots drawn out of the box and destroyed were Republican ballots—thus reducing the Republican majority at this poll 102 votes.

The vote at this poll should be corrected by deducting the 51 in excess of the poll-list from contestee's vote and adding to contestant 51 votes. Also add as tendered and refused 8 votes. Vote returned from this poll was—Finley, 168; Bisbee, 220. (Rec., p. 577.)

Madison poll No. 1.

The excess of ballots over poll-list at this poll was 53, and the testimony establishes that 52 drawn out were Republican ballots. On the first count of ballots there were about 25 in excess and on second count 53. This difference in the count was occasioned by the ballots falling apart or separating by handling, not only at this but at the other polls.

Vote at this poll should be corrected by deducting 52 ballots from Finley, and adding 52 to Bisbee. Also add one Republican vote, illegally rejected, to Bisbee. Vote returned was—Bisbee, 256; Finley, 256. (Rec., p. 869.)

Madison County poll No. 2.

The excess of ballots over poll-list at this poll on first count was 14, which were drawn out and destroyed, and they were Republican ballots so destroyed. On second count there were 20 more, which were not drawn out, but were counted. This would reduce the Republican majority 48 at this poll. (Testimony of Dennis Eagan, Rec., p. —. Testimony of Davis for contestee, Rec., p. 101.)

Vote at this poll should be corrected by deducting 14 drawn out from Finley's vote. Also, by deducting 20 not drawn out from Finley's vote, and adding 14 drawn out to Bisbee's vote.

Vote returned was—Bisbee, 302; Finley, 239. (Rec., p. 871.)

Cherry Lake poll.

At this poll on the first count there were 14 ballots in excess of the poll-list, and on the second count 4 more, making 18 in all. Of these drawn out 14 were Republican,

according to the evidence. (Testimony of Green B. Hill, United States deputy marshal, Rec., pp. 912, 919. Testimony of Augustus Johnson, Rec., pp. 920, 924.)

The vote at this poll should therefore be corrected by deducting from Finley's vote the one (1) vote cast by a minor, and the 14 votes in excess of the poll-list, and by adding 14 votes in excess of the poll-list to Bisbee, and the two (2) votes tendered and refused, making a difference of 31 votes.

Vote returned—Bisbee, 172; Finley, 86. (Rec., p. 881.)

Mosely Hall poll, No. 4.

At this poll the excess was at least 14 ballots, of which 10, at least, drawn out were Republican ballots, and not less than 13 Republican ballots tendered and refused (Testimony of Watt S. Gheete, Rec., pp. 940-942.)

The vote of this poll should therefore be corrected by deducting 10 votes from Finley and adding 23 to Bisbee. Vote returned, Bisbee, 136; Finley, 90. (Rec., 876.)

The majority returned for Bisbee in the Mosely Hall territory at the two polls in 1880 was less by 36 than in 1878, and it will be seen that the correction as given above of No. 4 makes a difference of 33 votes, or within 3 votes of the majority in 1878. This proves the great accuracy of the correction according to the evidence, compared with the vote of 1878.

Hamburg poll.

Contestant was unable to prove by witnesses the excess of ballots over the poll-list at this poll, and the specific numbers of votes lost by him by the same methods by which his vote was reduced at the other polls. But there is other evidence showing quite accurately the contestant's loss at this poll.

| | Finley. | Bisbee. |
|--|---------|---------|
| The vote returned from this poll is..... | 192 | 256 |
| In 1878 the vote returned was..... | 156 | 268 |

Bisbee's majority in 1880, 64. (Rec., p. 879.)

Bisbee's majority in 1878, 112.

Bisbee's majority in 1878 over that of 1880, 48, while the total votes was greater by 24.

It will be subsequently shown that it is proper to estimate the true vote at a given election by taking that of a prior election at which no fraud was charged.

But there is other evidence. It is proven that on the poll-list of this poll there are the names of 278 known Republicans marked with an X. The total number on poll-list is 447, consequently there are on poll-list the names of 169 Democrats: 278 Republicans; 169 Democrats; 109 Republican majority instead of 64 majority returned, a difference in majority of 45, and 3 votes less than the majority in 1878.

Correcting the votes by the number of known Republicans on poll-list, and giving to contestee all on poll-list not known to be Republicans (and it will be subsequently shown that such testimony is proper in the absence of better), we have its following result:

| | Finley. | Bisbee |
|--|---------|--------|
| Vote returned..... | 192 | 256 |
| Actual vote cast according to poll-list..... | 169 | 278 |
| Difference | 23 | 22 |

The vote at this poll will therefore be corrected by deducting from Finley 23 votes and adding to Bisbee 22 votes.

Substantially the same result is obtained by taking the vote of 1878, or by distributing the twenty-four votes in excess of 1878 over that of 1880 in proportion to its vote of 1878.

Summarizing the differences in the vote of the six polls between the returns and as shown by the evidence, we have the following:

| | Bisbee. | Finley. |
|-----------------------------|---------|-----------|
| Greenville poll..... | add 59 | deduct 51 |
| Madison No. 1 | " 53 | " 52 |
| Madison No. 2 | " 14 | " 34 |
| Cherry Lake..... | " 16 | " 15 |
| Mosely Hall, No. 4..... | " 23 | " 10 |
| Hamburg | " 22 | " 22 |
| Total..... | 187 | 186 |
| Difference | 372 | |
| Add returned majority | | 109 |

Bisbee's actual majority 482 instead of 109, as returned.

The theory of contestant as to Madison County, when analyzed, amounts to this, viz : He claims that fraud has been proven against the above six polling places, and prays in his notice of contest as follows :

In this county the gross fraud was committed by your political friends of stuffing the ballot-boxes with ballots containing your name for Representative to Congress at each of the two polls in the town of Madison, and at each of the several polls in the said county known as Cherry Lake, Hamburg, Greenville, and the two polls at Moseley Hall, and at each of the other polls in said county, whereby I was cheated and swindled out of five hundred and more votes. *I shall ask that the returns from each of said polls be rejected as evidence of the true vote cast. I shall ask that the county canvass be rejected as illegal and fraudulent.*" (Rec., p. 1.)

It will be seen from this that contestant prays "*that the returns from each of said polls be rejected as evidence of the true vote cast.*" Yet in his absurd though gainful calculation he constructs his whole theory in regard to each of the considered polls in Madison County upon the *returns* which he prays to have rejected as evidence.

Suppose, for sake of argument, we grant his prayer, and reject the returns from each of these polls as evidence, on the ground that their credibility is destroyed by the proof of fraud. How, then, can either party claim any votes from any of these precincts, except by proof *aliunde* of the returns ? And there is no such proof in the record.

The position is *unreasonable* and grossly and palpably in violation of the primary principles of law.

It is contended in behalf of contestant in regard to the Newnansville poll, in Alachua County, that the following language (quoted from McCrary) gives the true rule of law, viz :

It is very clear that if the returns are set aside no votes not otherwise proven can be counted.

This we admit is the true rule of law, and it is a gross inconsistency that would apply it to Alachua County and would wholly depart from it in Madison County and attempt to set up an entirely *new* rule, for which there is not an authority or precedent in the books.

The only way known to the law of disposing of such a case is either to accept the returns or to reject them "*in toto*," and put both parties upon the proof of their respective vote "*aliunde*." But the contestant seeks to establish an entirely new rule, unknown to the law.

The law cannot bend to suit the purposes of either party to the contest. There is no principle of law more clearly established, says McCrary.

And the safe rule probably is, that when an election board are proved to have willfully and deliberately committed a fraud, even though it affect a number of votes too small to change the result, it is sufficient to destroy all confidence in their official acts, and to put the party claiming anything under the election conducted by them to the proof of his votes by evidence other than the return. (See McCrary on Elec., p. 174.)

McCrary, on p. 372, says :

If the fraud be clearly shown to exist to such an extent as to satisfy the mind that the return does not show the truth, and no evidence is furnished by either party to a contest, and no investigation of the committee to enable them to deduce the truth therefrom, then no alternative is left but to reject such a return.

To use it under such a state of facts is to use as true what is shown to be false. (See Washburn *vs.* Voorhies, 2 Bartlett, 54.)

This statement of the law is peculiarly applicable to all the precincts attacked in Madison County.

There are but two ways known to the law of disposing of Madison County—either to let the returns stand as officially made, or to discredit them altogether. For if they are false they cannot be used for any purpose.

If they are false let us apply the above *unquestioned* rule of law to all

of the six precincts attacked in Madison County, viz: Greenville, Madison poll No. 1, Madison poll No. 2, Cherry Lake poll, Moseley Hall poll, Hamburg poll. The returns from these respective polls give the following vote:

| | |
|--|----|
| Greenville, Rec., 878 : Bisbee, 220 ; Finley, 163 ; Bisbee's majority..... | 52 |
| Madison No. 1, Rec., p. 869 : Bisbee, 256 ; Finley, 256 ; Bisbee's majority..... | |
| Madison No. 2, Rec., p. 871 : Bisbee, 302 ; Finley, 239 ; Bisbee's majority..... | 63 |
| Cherry Lake, Rec., p. 881 : Bisbee, 172 ; Finley, 86 ; Bisbee's majority..... | 86 |
| Moseley Hall, Rec., 876 : Bisbee, 136 ; Finley, 90 ; Bisbee's majority..... | 46 |
| Hamburg, Rec., 879 : Bisbee, 256 ; Finley, 192 ; Bisbee's majority..... | 64 |

Bisbee's total majority for above polls 311

The return from the whole county of Madison (see Rec., p. 1055) gives—

| | |
|--|-----|
| Finley, 1,055 ; Bisbee, 1,014 ; Finley's majority..... | 41 |
| If the above polls are rejected, add. | 311 |

Making Finley's majority for Madison County, instead of 41, as reported 352

No one can escape this conclusion.

But the so-called "*correction*" which contestant makes of the returns of the above several polls is very *remarkable*, and leads to a monstrous proposition of injustice to the contestee, doubling the vote of contestant by a strange process of *addition* and *subtraction*.

Let us take for example Greenville. Contestant claims that there were 51 ballots in the box in excess of the poll list as kept by the clerk (which the law says shall be destroyed unopened).

The proof is that these 51 ballots were destroyed and not counted for either candidate. This is sworn to by contestant's witness Stripling, on p. 944 of the Rec. Then, if these votes in excess, which the law of Florida commands to be destroyed and not counted, were destroyed in conformity to law, upon what ground can contestant claim that they should be deducted from Finley's vote, when they were never counted for Finley? And he makes this *strange* estimate as to all of the above polling places in Madison. Even if we should admit that, from the fact that there were a number of votes in the ballot-box at each of these polls in excess of the poll-list, there was sufficient evidence to warrant the conclusion that these votes rightfully belonged to contestant, it would be clearly wrong to deduct them from Finley's vote when they had never been counted for Finley. Such a proposition could never be maintained for a moment. This observation is as applicable to all the above six polls in Madison County which contestant has assailed as it is to the Greenville poll.

As Madison County can only be legally disposed of (as the case is made by the contestant) either by entirely throwing out and ignoring the six polls assailed, or by leaving them as returned, we do not deem it necessary to enter into a critical examination of the evidence in regard to the fraud charged and denied in this county. Suffice it to say that the record shows no proof of fraud made as to any of these polls, except as to Madison poll No. 1, where the vote as returned was a tie.

The testimony to refute the charge of fraud as to this poll is found in the record from page 1009 to 1036. But it can serve no useful purpose to discuss this question, as the vote from Madison County must either stand as returned or be rejected, and in consequence of their rejection 311 votes should be deducted from Bisbee's aggregate vote in the district, or added to Finley's aggregate majority in the district.

HAMILTON COUNTY.

The contestant claims as follows (see his brief, pp. 102 and 106.):

HAMILTON COUNTY.

Poll No. 3.

We ask that the election at this poll be set aside entirely, on the ground of illegal and fraudulent conduct on the part of the election officer and the friends of contestee. It is proven that the polling place was a scene of disorder, drunkenness, and violence, continuing through the greater part of the day, and that the result of the election was affected thereby.

In Hamilton County reject return at No. 3 poll, and deduct Finley's majority, no votes being allowed to either party, 68.

Below we append a copy of the notice of contest, and the copy of the answer of the returned member in reference to this county. The notice of contest is as follows:

HAMILTON COUNTY.

That in the county of Hamilton, at each poll of said county, ten Republican electors offered to vote for me, and were refused; that ten other Republican electors at each of said polls offered to vote for me and were prevented by personal violence and intimidation; and I shall ask that such votes be counted for me as if cast.

That at each of the polls in said county ten persons voted for you who were not legally registered voters; that ten persons voted for you at each of said polls who were non-residents; that five persons voted for you at each of said polls who were minors; that five persons voted for you at each of said polls who were convicted of infamous crimes; that five other persons voted for you at each poll, who were of foreign birth, without exhibiting their naturalization papers.

That at poll No. 3, in the county of Hamilton, your political friends sold, and caused to be sold, intoxicating liquors to the electors, whereby many of the electors became intoxicated and riotous and disorderly, and compelled electors, in a state of intoxication, to vote for you who otherwise would have voted for me. That the authority of the United States supervisors and deputy marshals were defied and ignored by the inspectors; that the inspectors of election acquiesced in and consented to scenes of lawlessness and disorder, and knowingly allowed persons to vote for you who were not qualified voters, and refused to receive the votes of those who offered to vote for me and were qualified electors, whereby the result of the election was effected.

Your political friends at this poll purchased and influenced electors to vote for you by means of bribery, promise of money, and other articles of value, at the said district No. 3, who otherwise would have voted for me; and I shall ask that the return from this district be rejected as evidence of the vote cast, and that the election at this poll be entirely set aside.

The answer is as follows :

HAMILTON COUNTY.

The contestee denies that at any of the polling-places within said county of Hamilton, at said election, any qualified electors who offered to vote for contestant were illegally refused the right to vote according to their choice, or that at any polling place in said county of Hamilton any qualified electors were prevented from voting for contestant by fraud, violence, or intimidation, or that at any polling place within said county of Hamilton any votes were cast and counted for contestee of persons disqualified by non-registration and who did not comply with the registration and other laws as the law allows; or that any votes were cast and counted at any of said polls in said county of Hamilton for contestee of persons under the age of twenty-one years, or of persons who were not resident, as the laws require; or of persons who were convicted of crime; or of persons who were foreign born, who were not qualified to vote.

And the contestee, answering as to poll number three (3), in said county of Hamilton, denies the allegations in the notice of contest in respect to said poll, and each of them; and especially denies each charge of improper and illegal conduct on the part of the inspectors at said poll, and denies that said inspectors knowingly contrived,

counseled, or connived at the violation of law, by the use of intoxicating liquors or otherwise; or willingly acquiesced in scenes of violence and lawlessness to defeat the fair election at said poll, or knowingly allowed persons to vote for contestee who were disqualified by law to vote; or that the political friends of contestee improperly, corruptly, and illegally, by bribery or other illegal and corrupt means, induced electors to vote for contestee, who otherwise would have voted for contestant at said poll; and denies that the result of said election was changed by reason of any of the matters alleged by contestant, at said poll No. 3, Hamilton County, at said election.

We quote the entire pleading of both contestant and contestee, as to this county, so as to present the issue squarely.

In the record (p. 1183 to p. 1195) will be found the evidence in regard to this county.

It will be seen that it is all contestant's testimony, taken in rebuttal when there had been no original testimony taken in this county, and *nothing to rebut*; that contestee has had no chance to controvert it.

What is the issue presented by the pleading as to this poll? To eliminate the material allegations in the notice of contest, they are as follows, viz:

1st. The contestee's political friends sold, and caused to be sold, intoxicating liquors to the electors, whereby many of the electors became intoxicated and riotous and disorderly, and compelled electors, in a state of intoxication, to vote for contestee who otherwise would have voted for contestant.

This allegation is denied by the answer. Is it sustained by the evidence?

The whole of the testimony shows only one voter who was led up to the poll, and there is no evidence, not a *scintilla*, that he was compelled to vote against his will, and not a particle of competent evidence that he voted for the contestee.

The next averment is:

That the *authority* of the United States supervisors and deputy marshals was defied and ignored by the inspectors.

What was the *legal authority* of United States supervisors and deputy marshals at a country polling place like this? Let us see. Section 2029 of the Revised Statutes of the United States provides as follows:

The supervisors of election appointed for any county or parish in any Congressional district, at the instance of ten citizens, as provided in section two thousand and eleven, shall have no authority to make arrests, or to perform other duties than to be in the immediate presence of the officers holding the election, and to witness their proceedings, including the counting of the votes and the making of a return thereof.

The act of Congress defines and limits the authority to the passive duty of watching and scrutinizing the conduct of the election, and of reporting any violation of the election laws.

As to *deputy marshals*, the law does not authorize or warrant the appointment of any deputy marshal, at any election, except in a city or town of 20,000 inhabitants or upward. (See sec. 2021, Rev. Stat. U. S.)

What authority of the United States supervisor and deputy marshal was defied? What does the evidence of contestant show? On p. 1184 of the Record the witness for contestant, Ruckley, testified that a row ensued in consequence of some Democrat leading a drunken negro to the poll; and that these doughty officers, the supervisor and deputy marshal, were engaged in the row, and *actually commenced it*. (See Rec., p. 1190.) On p. 1186 of the testimony of same witness is the evidence upon which contestant bases the charge concerning the inspectors' ignoring and defying the authority of the deputy marshal and supervisor. We give it literally, as follows:

Q. Did or not the inspectors apparently acquiesce in the violent conduct of the voters around the polls?—A. I heard nothing for or against it, more than one of the supervisors ordered the polls closed during the row.

Q. Did the inspectors pay any regard to the order of the supervisor?—A. None whatever that I could see.

This is the head and front of the offending on the part of the inspectors of the election, who by the laws of the State are intrusted with the management of the election themselves. They did not close the poll and stop the election at the command of a supervisor who had no such authority vested in him by act of Congress.

The next charge in the notice of contest is as follows:

That the inspectors acquiesced in and consented to scenes of lawlessness and disorder, and knowingly allowed persons to vote for you who were not qualified voters, and refused to receive the votes of those who offered to vote for me and were qualified electors, whereby the result of the election was affected.

Where is the evidence "that the inspectors acquiesced in and consented to scenes of violence?"

Rackley, on p. 1186, testifies as follows:

Q. Did the inspectors make any effort to quell the disturbance and disorder, and maintain peace and quiet about the polls?—A. None that I saw or heard.

Q. Would you not have seen it if they had done so?—A. I should think I could, as I was within 10 or 15 feet of the polls.

Q. Did or did not the inspectors apparently acquiesce in the violent conduct around the polls?—A. I heard nothing for or against it, more than one of the supervisors ordered the polls closed during the row.

Again, the deputy marshal, who, together with the supervisor, commenced the row (according to his own testimony, see Record, p. 1190), says, on page 1102:

Q. Did the inspectors make any efforts to suppress the violence and turbulence around the polls?—A. Not that I saw or heard, and I was near the polls all day.

We quote from the record the description of this *lilliputian* row, in which this Ajax deputy marshal was engaged according to his own testimony, on page 1190 of the Record. Here is the description he gives of the great row:

Q. How long did the row continue? And describe it.—A. Somewhere about 30 minutes. Just in the time of the row, M. O. Waldron was in the act of striking a negro when I got to him; I succeeded in stopping him. Just at that time A. S. Smith jerked up a club and started to B. E. Raulerson to strike him, and some one interfered. Just at that time B. Wesson was trying to get his pistol, when I got to him. I also told him that if he didn't stop fussing there that I should have to arrest him. Wylie Lee said that if I wouldn't arrest him that he would take him away; and that ended the row there at the polls. The cause of my making no arrest was that I considered it worth a man's life to do it.

Such is the character of the case made by contestant by *ex parte* testimony at Hamilton County poll No. 3.

The assault made upon this poll is so *friolous* and *flimsy* that we feel convinced that to throw it out would be an arbitrary disfranchisement of a whole voting district without legal warrant or excuse. This poll should stand as returned.

DUVAL, PUTNAM, ST. JOHN'S, NASSAU COUNTY.

Foreign-born electors.

Section 3, article 14, of the constitution of Florida, reads as follows:

At any election at which a citizen or subject of any foreign country shall offer to vote, under the provisions of this constitution, he shall present to the persons lawfully authorized to conduct and supervise such election a duly sealed and certified copy of his declaration of intention, otherwise he shall not be allowed to vote, and any naturalized

citizen offering to vote *shall* produce before said persons, lawfully authorized to conduct and supervise the election, the certificate of naturalization, or a duly sealed and certified copy thereof; *otherwise he shall not be allowed to vote.*

The contestant claims that "about seventy-five alien-born persons voted for contestee without complying with this provision of our constitution."

He contends that "the words of the negative provision of the section of the constitution quoted, prohibiting the reception of votes by alien-born persons, unless they produce their naturalization papers, is substantially and in effect the same as the negative words of the provisions requiring registration, which are: '*No person not duly registered according to law shall be allowed to vote.*'"

He also says:

It has long been settled, and will not be controverted, that a vote cast by a person not registered according to law, is an illegal vote, even under a law containing no negative words.

It cannot be denied that the people have the right to fix the *qualifications* of electors, and to prescribe the *evidence* of such qualifications. In Florida they have done this in the organic law.

For the native-born the *evidence of the qualification and right to vote is registration*; for the alien-born the certificate of naturalization or declaration of intention in addition to registration.

Each class is prohibited by identical words in the constitution from voting without producing this evidence.

To hold that a *vote by an unregistered citizen is illegal*, and that a *vote by an alien-born person* without producing the *evidence of naturalization*, without which the law says *he shall not be allowed to vote*, is legal, would be glaringly inconsistent, and illogical. *Both are illegal upon the same principle.* The contestee does not contend that an alien-born person who is not naturalized, or has not declared his intention to become a citizen, is a legal voter. But he contends that if the inspectors of election did not require such a person to produce this evidence of a qualified voter he was not bound to, and his vote is legal.

This extract from the contestant's argument gives the issue fairly which is involved in this portion of the contest. He rests his case against these alleged foreign-born votes on the analogy which they bear to unregistered votes, and claims that they are illegal for the same reasons which justify the rejection of unregistered votes. Taking the argument of the contestant as a true statement of the case, what is the law applicable thereto?

An authority immediately to the point, and from the State of Florida, and between the same parties as the present case, is found in the case of *Finley vs. Bisbee* in the Forty-fifth Congress, wherein the majority of the Committee on Elections held:

If a person votes at an election his vote is presumed under the law to be legal until the contrary be proven in a legal way, for the reasons, first, that the acts of an officer or officers of an election within the scope of their authority are presumed to be correct and honest until the contrary is made to appear, and therefore that they as such officers would not receive an illegal vote; second, that the presumption is always against the commission of a fraudulent or illegal act, and therefore that a man would not cast an illegal vote.

This case, which rules the one in hand, was affirmed by a large majority as the law by which Congress will be bound in such cases in the contest of *Curtin vs. Yocum* in the Forty-sixth Congress.

The report of Mr. Calkins, in *Curtin vs. Yocum*, holds:

It is the duty of the election officers to comply with this law. It is imperative on them, and if they fail they subject themselves to the penalties provided in sec. 12 of the registry law. But to allow a non-registered voter to vote without requiring him to comply with the law, if he is otherwise qualified, is quite a different question. If he refuses to comply on being requested, then it is clearly the duty of the officers to refuse his vote because he refuses to obey a reasonable regulation prescribed by the

legislature, and he hurts no one but himself. But if he is allowed to vote without being required to file the affidavits and is otherwise qualified his vote is not an illegal one. The officers of the election have simply failed to take and preserve the evidence which the law requires of them, but the failure on their part to take and preserve this evidence does not reach the qualification of the voter.

The report further holds :

That the clause "no voter shall be deprived of the privilege of voting by reason of his name not being registered" protects all legal voters in the right of suffrage, and the inference to our mind is irresistible under this decision that he is not even *prima facie* an illegal voter because of non-registration (See McCrary, sec. 423.)

That case was also largely ruled by the decision of Judge Briggs, in the case of Gillin vs. Armstrong (Leg. Int., July 19, 1878), which holds :

That unregistered voters having voted without making the affidavits, the law presumes that they are legal, and it cannot be permitted to show that they were not so legal.

The case of Curtin vs. Yocom, which is not reported yet, we quote fully on this point. It was tried on the sole issue that an unregistered vote was an illegal one. The present able chairman of the Election Committee (Mr. Calkins), who made the report of the minority in that case, which was adopted by the House, and thereby became the law of Congress on the subject, said in his closing argument :

All other grounds were abandoned ; the majority report is bottomed upon that single proposition of law, that any person voting whose name does not appear on the registry list is an illegal voter.

This case showed that there were (1) between one and two thousand persons who voted at the election who were not registered ; (2) that there were three hundred and eighty persons voted who were not registered and who were shown by affirmative testimony not to have made the proof required of non-registered voters to entitle them to vote ; and (3) that there were ninety persons who voted for the contestee, more than his majority, who were not registered and made no proof required of non-registered voters. The issue was therefore plainly and fairly made. Mr. Calkins in his argument said :

I call the attention of the members of the House especially to the conclusion reached by Judge Briggs in construing this law. He says : "By accepting the vote," referring to the non-registered voter who presents himself at the polls without an affidavit, &c. "By accepting the vote without demanding the proof they deprive the voter of the opportunity of furnishing it." To construe the law as contended for by my friend from Pennsylvania (Mr. Beltzhoover) makes it a mere trap for the reason that the voter presumes, or he has a right to presume, that he is registered. He has lived in the precinct the time required by law ; he has paid his tax ; the assessor has been to his house ; he knows his name ought to be on the registry list, and he goes up to the ballot-box with the ballot in his hand. They take his ballot and deposit it in the ballot-box, and afterward, when he cannot furnish the proof, it is contended his vote is an illegal one, while if the election officers had called his attention to it at the moment he could have supplied the evidence required and established his right to vote in the mode prescribed. But that evidence was not demanded. He voted knowing that he had a legal right to vote, but the legal evidence of his right was not required of him by the election officers. And applying the same doctrine as in Wheelock's case, "you cannot deprive the legal voter of the right to vote by reason of the failure of the officer to do his duty," and it seems to me that the position is unassailable.

The next position I assume is that a vote having been deposited in the ballot-box unchallenged is presumed to be a legal vote until the contrary is shown ; and I call attention to the case of Perry vs. Ryan, 68 Illinois, 172. "Where a person votes at an election without having been registered and without any proof of right, if it does not appear he was challenged or any objection made to his vote, the presumption must be that he was a legal voter and was known to the judges of election." In 83 Illinois, 498, where a registry law very similar to the law now under consideration was construed by that court, it was held, "The presumption of the legality of a vote in no way depends upon the omission to challenge or to object to it, or any presumed knowledge of the judges of election, but it arises from the fact of its having been deposited in

the ballot-box. When once deposited it will be presumed to be a legal vote until there is evidence to the contrary."

The same doctrine was held in the case of *Finley vs. Bisbee* in this House in the last Congress. It is said by the chairman of my committee that the provisions of the law of Florida and the law of Pennsylvania are different, and therefore a different rule prevails. If they are materially different, Mr. Speaker, I admit it, but they are not materially different, because in the Bisbee-Finley case the committee held one provision of the constitution, which was mandatory in its language, to be directory merely. The language was that certain persons offering to vote shall "present to the officers certain naturalization papers at the time they offered to vote. That was a part of the constitution of Florida, and yet the Committee on Elections in construing it said the clause was not mandatory, although it was a part of the organic law of Florida, but was directory merely. Let me quote a sentence from that report, which I believe was written by Judge Cobb. He says: "It is the settled law of election cases that where persons vote without challenge it will be presumed that they were entitled to vote, and that the sworn officers of the election who received their votes performed their duty properly and honestly, and the burden of proof to show the contrary devolves upon the party denying their right." Mark, Mr. Speaker, "the settled law of all election cases" is the language, and this House solemnly sitting as a court adjudged that to be the law. And yet in this case the majority of the committee say that every vote that went into the ballot-boxes unchallenged in Pennsylvania, which were unregistered, are presumed to be illegal. I admit that the courts of Wisconsin, in two cases, have held their law mandatory in construing a similar provision. I also take occasion to state that Judge Dixon, one of the ablest judges that ever sat on the supreme bench of that or any other State, apologizes for having so held.

Mr. Stevenson, who also sustained the minority report in the *Curtin vs. Yocum* case, and argued it at length, rested the case on "the pivotal point" of the status of an unregistered voter, who has been permitted to cast his ballot without making the proof required by law. He says:

The law presumes the officers conducting the election to have discharged their duty; presumes they have received the votes of none other than legally qualified voters. This presumption can only be rebutted by evidence.

He then goes on to cite very fully the decision made by Congress in the *Finley vs. Bisbee* case in the Forty-fifth Congress, and gives the strongest extracts from the report of the committee. He also cites *Wheelock's* case, 1 Norris, 297, and the case of *Gillon vs. Armstrong*, and resting his case on these authorities, concludes:

I think I have shown, Mr. Speaker, by recognized authorities, first, that the elector cannot be deprived of the right of suffrage by the ignorance or misfeasance of the election official; second, that under the constitution of Pennsylvania he cannot be debarred from voting by reason of non-registration; third, that the officers conducting the election are presumed to have done their duty, and received only legal votes; fourth, the burden of proof is on the party assailing their legality.

TESTIMONY WHICH SHOULD BE EXCLUDED.

The record shows that all the evidence taken in the counties mentioned below by contestant was taken as *rebutting* testimony, after the expiration of the time allowed by law for taking original testimony; that neither contestant nor contestee had taken any testimony in any of these counties during the forty days allowed to each, and that consequently there was *nothing to rebut*; that the contestant disregarded the act of Congress, which says that "the contestant shall take testimony during the first forty days, the returned member during the succeeding forty days, and the contestant may take testimony in *rebuttal only* during the remaining ten days of said period" (of ninety days).

The following are the counties where contestant took such original testimony in the ten days allowed him for rebutting testimony only, and where contestee had taken no testimony; and where there could not therefore possibly have been *anything to rebut*, viz: Brevard, Brad-

ford, Columbia, Hamilton, Putnam, Orange, St. John's, Suwanee, and Volusia counties.

The record shows that no evidence-in-chief was taken in or concerning the election in any of these counties, and none whatever by the contestee during his forty days, and that all of contestant's testimony therein was taken after contestee's time had elapsed, and after the contestant's time for rebuttal had commenced. See *Vallandigham vs. Campbell* (1st Bartlett, p. 223); *Brooks vs. Davis* (1st Bartlett, 244); *McCravy on Elec.*, secs. 347, 348); *Bromberg vs. Haralson* (first session Forty-fourth Congress, vol. 5, Index to Miscellaneous Documents Digest of Election Cases, p. 364.)

It is claimed that all this testimony should be rejected.

Against all the evidence taken by the contestant in the above-mentioned counties the *unanimous* report of the Committee on Elections in case of *Bromberg vs. Haralson*, first session Forty-fourth Congress, is cited. It appeared in that case that in Wilcox County the contestant, Bromberg, the Democratic candidate, undertook to violate the election law, just as the contestant in this case has done, and that his testimony so taken was rejected. (See *Bromberg vs. Haralson, supra.*)

All the testimony in the above counties is *ex parte* in behalf of contestant. The notices served by contestant on contestee for taking this testimony in all those counties informed contestee that contestant would proceed to take testimony in rebuttal. The contestee, knowing that no original testimony had been taken in any of these counties, and that there could be nothing to rebut, declined to attend such examinations of witnesses. The contestant, instead of taking rebutting testimony, proceeded to take *original* testimony.

The contestant also contends that his leading attorney was sick, and that he (contestant) was absent in Washington attending to his duties as a member of Congress, and that this is a sufficient excuse for not taking testimony in the time and manner allowed by law.

The record shows that the answer of the returned member was served on the 3d of February, 1881, and upon that day contestant's forty days for taking testimony commenced. The contestant contends that on account of the trouble which occurred in Madison County on the 8th of February, his leading attorney, H. Jenkins, became sick. The following extract from the certificate of the officer before whom his evidence was taken, p. 885 of the Record, shows that on the 18th of February his attorney, Jenkins, was attending to his case. (See Record, 885, as follows:)

Contested election, Forty-seventh Congress of the United States.

HORATIO BISBEE, JR., }
vs.
JESSE J. FINLEY. }

In pursuance of notice of contestant, in the above-entitled cause, to contestee, of taking testimony, a copy of which notice is hereunto attached, filed by contestant, I have this day begun the examination of witnesses on behalf of contestant, H. Bisbee, jr., at my office in Jacksonville, Duval County, Florida, this 18th day of February, 1881; H. Jenkins, jr., attorney for contestant, and S. J. Finley, attorney for contestee, being present.

J. C. MARCY, JR.,
Notary Public.

On page 67 of the Record the following certificate of Watson Porter, the officer who took contestant's testimony in Alachua County, shows that contestant appeared there by another attorney, and that he did not commence taking his testimony there until the 7th of March.

ALACHUA COUNTY.

Pursuant to notice of contestant in this case, I, Watson Porter, notary public for the State of Florida at large, sat in my office in the town of Gainesville, Fla., Alachua County, on Monday, the 7th day of March, A. D. 1881, at 9 o'clock a. m., for the purpose of examining witnesses and taking evidence on behalf of the contestant; W. T. Pierson and F. E. Hughes appearing as counsel for the contestant, and no one appearing for the contestee.

Counsel for contestant offers to be filed a copy of the notice of taking testimony, with a list of witnesses for district No. 12, which is filed and marked Exhibit A.

Counsel for contestant also offers to be filed a copy of notice of contest in this case, which is filed and marked Exhibit B.

Contestant's counsel also offers a copy of the answer of contestee, which is filed and marked Exhibit C.

Counsel for contestant files in evidence a certified copy of the poll-list for Arredonda district No. 12, Alachua County, filed and marked Exhibit D.

At 9.30 a. m. T. F. King appeared as counsel for contestee.

The Record shows that contestant's forty days were not diligently occupied, but frittered away; so that there is no excuse for asking any further indulgence to contestant. The contestant says in his brief (p. 2) that most of the frauds were charged to have been committed at less than a dozen polls.

Sec. 109, Rev. Stat., provides—

That testimony in contested election cases may be taken at two or more places at the same time.

And in section 110, Rev. Stat., so numerous a class of officers are authorized to take testimony that in every county there is no difficulty in finding officers qualified to take such testimony.

Mr. McCrary, sec. 348, says:

The statute as it now stands (see sec. 108, Rev. Stat. U. S.) affords an opportunity for investigation, so ample and complete that it is believed that it will seldom happen that the House will find it necessary to depart from its provision in order to do the most complete and perfect justice, and it will no doubt be adhered to as furnishing the best possible guide for instituting and carrying forward inquiries of this character.

We have considered almost all the testimony thus irregularly and illegally taken, but we earnestly protest against the admission of such evidence unless great injustice would be done by rejecting it. We prefer to adhere to the law. The above-mentioned counties should stand as returned, however, both from the fact that all the testimony taken by contestant to assail them is unwarranted, and because the testimony itself, as shown by the record, is insufficient to warrant the committee in rejecting the official returns and thereby disfranchising hundreds of legal voters.

CONCLUSION.

We believe from the evidence, and under the law applicable to the case, that Alachua, Madison, and Marion Counties should stand as returned.

The returns from the whole district give—

Finley, 13,105 votes; Bisbee, 11,953 votes; Finley's majority, 1,152.

If the six polls, where fraud is charged in Madison County, should be rejected, 311 votes (Bisbee's majority in them) should be added to Finley's returned majority of the whole district; thus, $1,152 + 311$, which would give Finley's majority for the whole district 1,463 votes.

But if we give the contestant the benefit of the most extreme liberality, and allow him all votes to which he could in any way be entitled, the summary would be as follows, viz :

| | |
|--|--------|
| Finley's official vote..... | 13,430 |
| Bisbee's official vote..... | 12,427 |
| Add from Alachua..... | 88 |
| Add from Marion..... | 122 |
| Add from Nashua | 2 |
| Add from Madison | 328 |
| Add from Orange..... | 33 |
| | 13,000 |
| Finley's majority..... | 430 |
| From this may be deducted all other votes which there is any proof to show were disallowed..... | 114 |
| Leaving Finley's majority..... | 316 |

Thus the most favorable showing which could in any way be obtained would leave the contestant still over 300 votes short of an election.

We therefore recommend the adoption of the following resolutions:

1st. *Resolved*, That Horatio Bisbee, jr., was not elected as a Representative to the Forty-seventh Congress of the United States from the second Congressional district of Florida, and is not entitled to occupy a seat in this House as such.

2d. *Resolved*, That Jesse J. Finley was duly elected as a Representative from the second Congressional district of Florida to the Forty-seventh Congress of the United States, and is entitled to retain his seat as such.

F. E. BELTZHOOVER.
L. H. DAVIS.
S. W. MOULTON.
G. AHERTON.

I concur in the conclusion that Finley's actual majority, as stated in the summary, is 316.

G. W. JONES.

JOHN C. COOK vs. MARSENA E. CUTTS.

SIXTH CONGRESSIONAL DISTRICT OF IOWA.

Contestant charges that persons voted for contestee who had not been in the State six [months?] and that five votes were erroneously counted for contestee in footing up a tally-sheet.

Held, That as the constitution of Iowa required six months' residence in the State before a person can vote, and a number of persons voted for contestee who had not resided in the State that length of time, such votes must be deducted from the certified vote of contestee.

That the error of five votes in footing the tally-sheet is so apparent that the same must be corrected, and that number of votes also be deducted from contestee.

Witnesses called to testify refused to disclose for whom they voted. *Held*, That this may be shown by circumstances: Who they were employed by; who brought them to the polls; who challenged them; who urged and directed them, and gave them their tickets.

The House adopted the majority report.

FEBRUARY 19, 1883.—Mr. BELTZHOOVER, from the Committee on Elections, submitted the following

R E P O R T:

The Committee on Elections, to whom was referred the contested-election case of J. C. Cook vs. M. E. Cutts, from the sixth Congressional district of the State of Iowa, submit the following report :

I.

The vote, as found by the State canvassing board certified to them, was as follows:

For contestee, 18,619, and contestant, 17,918.

But the county canvassers of Monroe County wrongfully excluded and failed to certify the vote of two townships (Cedar and Franklin), in which contestant had 213 and incumbent 121 (Rec., 130 to 174, inc.). Adding this, we have the vote as actually cast—for contestee, 18,140; for contestant, 18,131. The majority of the sitting member is therefore conceded to be only 9.

II.

Contestant charges that at the Albia coal mine, in Monroe County, colored men had been imported from Missouri and Kansas to work in the mines, and that of these miners a large number who had not been in the State six months voted for contestee.

The constitution of Iowa requires full naturalization, residence in the State six months, and excludes idiots and lunatics.

While the proof tends strongly to show that about 100 of these colored men voted for Mr. Cutts, which was considerably in excess of the number entitled to vote, yet it lacks that definiteness and clearness in identifying and pointing out the voters and showing the vote illegal necessary to warrant us in excluding more than two votes, those of Lucius Bell and John Walker, especially the latter.

It is shown that they voted, and voted the ticket on which was contestee's name (Rec., 128 and 129), and were not legal voters. Also, the pay-roll of the company shows that neither were at the mine as early as May, 1880.

The contestee offered evidence to explain or account for the absence of other names from this roll, but made no attempt to explain as to these; and as to Walker, in addition to this, it is shown that he had no intention of making Iowa his home, but always intended to return to his family in Leavenworth, Kans.

III.

The contestant rests his case mainly on the charge that in Des Moines and Harrison Townships, in Mahaska County, twenty-three illegal votes were polled for contestee by colored men working in Muchikinock coal mines.

It is abundantly proved, and in fact not denied, that the coal company imported, in "lots or crowds," colored men as miners from Virginia; and that these were brought by Maj. Thomas Shumate, who was employed for that purpose (Rec., 319, 321). The first crowd came to Iowa March 5, 1880. (Rec., 550, interrogatory 10, and 583, interrogatory 2.)

The second party came April 4, 1880. (Rec., 560 and 561, interrogatories 2 and 16; 583, interrogatory 2; 585, interrogatories 2, 3, and 4; and 626, interrogatory 3.)

The fourth came July 2, 1880. (Rec., 550, interrogatories 5 and 6; 559, interrogatory 122; 585, interrogatories 8 and 9; 586, interrogatories 23, 24, and 25; 592, interrogatory 38; and 395, top of page.)

The fifth came in September and the sixth in October, 1880.

On this there is no dispute. It is sustained by the testimony of witnesses on both sides.

The time of the arrival of the "third or May party" only is in dispute.

The contestant claims they came May 15, and the contestee claims they came May 1.

If they came after May 1 they were too late to vote.

Briefly stated, the testimony on this point is as follows: The witness Shumate, who brought the April and all subsequent crowds from Virginia, says they came there on the 15th of May. He exhibits letters written by himself to his wife, who was then in Virginia, and with whom he corresponded while in Iowa.

These letters were written at Muchikinock, April 13, 17, and 26, and from these he is positive that he did not leave Iowa for that crowd until after the 26th. It would take him at least three days to make the trip each way, and several days in Virginia to gather up the crowd and prepare for emigration, thus making it impossible to have arrived in Iowa as early as the 1st.

He also exhibits and puts in evidence a similar letter written and dated at Muchikinock on May 16, 1880, in which he says he arrived the day before, and narrates the incidents of the trip to Iowa. An inspection of this letter shows many evidences of its genuineness. He is supported in this by the testimony of five other witnesses (Rec., 96, 97, 366, 391, 392, 393, 397, 507, 508, and 511); each of these five witnesses has some circumstance by which to fix the date.

The contestee introduces eight witnesses, who swear that the crowd came May 1; some of these were of the May party and some were not. But none of them have any circumstance or fact by which to aid the memory in fixing the date, and as they testified two years thereafter they may well have been mistaken as to the date.

But whatever doubt remains on this point is dispelled by the rebutting evidence taken by contestant.

In the cross-examination of the contestee's witnesses, and also by other evidence, it is shown that this crowd came from Chicago over the C. and N. W. railway to Marshalltown, Iowa, in a car which was dropped by the train at that place some time in the night, and they remained in it until morning, when they were put into an old black passenger coach on the Central Iowa Railway, which was attached to a freight train and run down to Muchikinock. (Rec., 562, interrogatory 57; 592, interrogatories 41 and 42; 610, top of page; 632, interrogatories 24 to 34; 648, interrogatory 46; 653, interrogatories 17 to 37; and 505, interrogatories 10 to 21.)

It is, then, by contestant in rebutting, conclusively shown by the records in the general offices of these two roads, and several of their officers and employés, that this did not occur on May 1 nor thereabouts, but did occur on May 15.

Further than this, these people were gathered up by Shumate at Staunton, Va., and their leaving was a matter of such public notoriety that it was published and commented upon at the time by the Staunton

newspapers. The original publications being exhibited before the committee, show that this crowd left Staunton for Iowa on May 12, and there can be no room for doubt that they came to Iowa on the 15th.

It cannot be claimed that two parties came in May, for it is not attempted to be shown in the testimony. The records of the coal company show only one May party; and contestee, by his own evidence, showed the July party to have been the fourth party, whereas if two parties had come in May the July crowd would necessarily have been the fifth. (Rec., 550, interrogatories 5 and 6; 559, interrogatory 122; 585, interrogatories 8, 9, and 10; 586, interrogatories 23, 24, and 25.)

The contestant, in his brief, asserted that it was conceded that only one crowd came in May; and contestee, in his printed brief, conceded this, and said that it was doubtful whether they arrived May 1st or 15th. (See contestee's brief, page 45.)

Major Shumate testifies positively that seven men, to wit, Jesse N. Carroll, Charles Garrison, George W. Lewis, Henry Lewis, Sam Moppin, James S. Martin, and Linza Robinson, came in the "third of May crowd." This is not only not disputed, but contestee's witnesses testified to substantially the same thing. (Rec., 589, 559, 609, interrogatories 9, 14, and 15; 631 and 632, interrogatories 3 and 26; and page 653.) And contestee, in his printed brief, admits that the third of May party embraced these seven names. (See brief, page 45.)

IV.

The votes of the following of said colored miners are also claimed to be illegal on the same ground, to wit: James Usher, James Byers, John Clark, William Harland, William H. Hues, Spencer James, John W. Jackson, Andrew Lewis, Earnest Linsey, G. W. Randall, Hardin White, Sam Winbush, Randolph Willis, Joseph James, John Burks, and D. F. or Frank Woodward, and it is claimed that they came, some in the July, some in the September, and some in the October crowd. And on this point there is no conflict in the evidence.

It is shown that the company made out monthly pay-rolls, which was the basis of its monthly payments to and settlements with its men. In addition to this it is shown that the company advanced their railroad fare from Virginia to Iowa, and as a crowd was brought their names were entered on a roster or book kept for that purpose, and the amount advanced to each was placed under his name as an item of charge; then as he was charged upon the pay-roll of that month, on such account, the same was credited to him on this roster. This book fails to show the day of the month when any man came, but by observing the order in which they appear, and the month of the pay-roll referred to there, one can readily see the month when each man came.

Many of the men also, while giving testimony, stated the time of their arrival, which invariably corresponds with the time thus shown on the roster. In addition to this, the contestee in his testimony showed who came in the May crowd, all of whom appear upon the roster as coming in May. George W. Lewis testifies for the contestee to this effect (Rec., 631), and his name is on the roster as the last of the May crowd. The name immediately following his, as the first of the July crowd, is Adam Fielding, who also testifies for incumbent that he came in the July crowd; and all these names last specified as illegal voters appear upon the roster after him. It is certainly apparent from this that these men came in July or later.

This book was kept by the company (a corporation) for the purpose

of keeping track of these men and keeping their accounts, and in the absence of any effort by the contestee to contradict, where the means to contradict it, if incorrect, was at hand, must be conclusive. None of these names appear on the pay-rolls until after May ; and while a name might have been omitted from the pay-roll by accident or a mistake made in the name, yet when the name also appears upon the roster for the first time after the May crowd, and is there put down as coming in July or later, there is left no room for reasonable doubt that such man came too late to vote. And, further, the witness Shumate is interrogated specifically as to all but two of these (Burks and Woodward), and says they came later than May, and the fact is noteworthy that, although testifying without any aid from the roster (which was then in possession of the contestee), the time he fixed as the month of the arrival of these men is uniformly the same as that indicated by the roster when it was finally produced.

It seems that the company did quite an extensive business, paying on its rolls for labor during the month of May over \$5,000, and that these rolls are the basis of each monthly settlement with its men, and the roster was kept for the purpose of keeping track of the colored people brought there, and keeping their accounts. They also appear to have been kept with a fair degree of accuracy, and therefore they furnish a very reliable character of evidence, especially as the contestee had at hand witnesses to dispute their accuracy if not correct in a particular instance.

As to the two men Burks and Woodward, concerning whom Shumate was not interrogated, their names occur on the roster among those who clearly appear to have come in July.

As to Shumate, it may be said he is sustained by the records and books of the coal company on every material point.

He testifies intelligently, with apparently no motive to falsify, and it is noteworthy that on all the points on which he was disputed he is clearly shown to have been correct by evidence afterwards discovered.

That the character of this roster or book of accounts may be understood we quote from the evidence.

In the testimony originally taken (March, 1881), McNeal, one of the proprietors of the mine, said, "We have a record containing the name and time of commencing work of all the men brought from Virginia," &c., but declined to produce it (Rec., 119); and afterwards (March, 1882), he was again called, and, after testifying that all the colored men were brought by Major Shumate, he says :

Question. When these colored men were brought were their names entered upon a register or roster, and their advances for railroad fare charged to them upon the same at the time ?

Answer. Their names were entered upon the roster, and the amount of each charged. This may have been done immediately on arrival, or afterwards. This was done in my office by William Phillips, who is now in Austin, Texas.

Question. You, I suppose, frequently saw this register or roster ?

Answer. Yes, sir.

Question. State whether or not it contained the names of the men coming in the various lots as they arrived.

Answer. It was kept for that purpose, and should have contained them, and the supposition is that it does (Rec., 319, bottom).

Major Shumate, after testifying that he brought all the colored men from Virginia, says :

Question. What was done by the company or its clerks and yourself with reference to making a record or account of those men when they came ? Please state fully.

Answer. We kept a register or roster of them. The rule was that all their accounts were charged up in that, including transportation, except store account.

Question. How soon was this record made, and what did you call it?

Answer. It was but a few days after our arrival. I took a memorandum of their names on the trip out and furnished it in sheet form to Mr. McNeal—made up the roster, as we called it. (Rec., 321, bottom; 322, top; and again Rec., 325, top.)

Interrogatory. Did you vote at the fall election of 1880?

Answer. No, sir; I don't know who voted; I took no lot nor part in it. I never saw any poll-book or anything connected with it. I would like to explain before cross-examination. Whenever I went for a party of men and returned, I rendered an account at the office of my expenses and charges to the men, from a memorandum book, and handed in sheet form to the clerk, but made no entries myself on books of the company; frequently the roster was made in my presence. William Phillips usually asked me to stay and see the entries on the books, as he could not read my writing very well and could not make out the names.

Cross-examination:

Interrogatory. Did you see entries made in the roster?

Answer. I saw them after they were made. Mr. Phillips usually would call on me to read the names from my sheets, and he would take them down while writing at his desk. I had frequent occasion to examine them after they were made. I can't say that I did. (Rec., 325, top.)

Bringing these men to the mines and the employment of colored miners was a new thing; the company advanced their railroad fare, and it would be necessary for it to keep some account of the matters, and this book would be what might be expected.

The first men upon it are the March party; they are each charged the railroad fare, \$12, and are credited for work done in March.

It will be observed that the same amount credited to each man on the roster is charged to him on the March pay-roll, and the same names on the roster as the March party are on the March pay-roll. (Rec., 412, &c.)

Then comes those who came in April; here again railroad fare is charged, and each man credited by work done in April.

Then comes the May party, as follows, beginning on page 67, and ending on page 78 of the roster:

Annie Carter, Sam. Maupin, Grace Maupin, Mary Carter, Julia Bess, Linzea Robinson, Mary Robinson, James Martin, Henry Lewis, Minnie Garrison, Charles Garrison, Mary Ella Garrison, Mary A. Carter, Willie Garrison, Wm. Howard, Andy Turner, Mary Bates, Mary E. Irwine, Jesse Carroll, James Cary, Sarah Garrison, Sarah Poindexter, George Lewis.

Those preceding them were credited "by April rolls," being for work done in April; all these are credited "by May rolls," showing that they did no work before May.

These various parties appear upon the roster, each separate and distinct from the others, and in the order in which they came, with the single exception that five men are entered and their accounts begun at the close of the April or second crowds, but the entries themselves show that they were of the March party, so that even this shows correctly the month they came. It is accounted for by the facts that McNeil, proprietor, himself came to Virginia for the first lot, and himself paid the expenses of this party out; and as this was a new project, the plan of keeping their accounts was probably not adopted nor systematized immediately on their arrival. So that we have the positive proof in the books and accounts of the coal company that these seventeen men came in July, September, and October, 1880, and the distinct evidence of the man who personally gathered them up and took them out, who gives the time of arrival of each to the same effect. Against this there is not even an attempt to offer evidence. In short, it stands undisputed by a word of evidence or the slightest circumstance.

These sixteen added to the seven who came in the May crowd makes

twenty-three who are clearly proven to have come too late to vote. And we might add that these colored people were taken to the polls and voted by white men who were laboring to secure for their party as large a vote as possible, and it would be strange had not illegal votes been cast by some of them.

V.

These men are all shown to have voted in East Des Moines and Harrison Townships.

First is given a certified copy of the poll-list in each township (Rec., 99 and 103); second, the original poll-list is proved by the clerks and put in evidence (Rec., 344 and 346); and, third, the clerks of the election marked the name of each colored miner on the poll-book as he voted, and they appeared and testified that these men voted.

In East Des Moines Township—

| | | |
|---|----------|-----|
| Jesse H. Carroll | is No .. | 31 |
| Earnest J. Linsey (see Rec., 99, for correct name)..... | " " | 46 |
| James S. Martin (see Rec., 99, for correct name)..... | " " | 47 |
| George W. Lewis (see Rec., 99, for correct name) | " " | 48 |
| Henry Lewis (see Rec., 99, for correct name) | " " | 184 |
| Charles Garrison (see Rec., 99, for correct name) | " " | 185 |
| (Rec., 98 and 100, &c.) | | |

In Harrison Township—

| | | |
|-----------------------|----------|-----|
| Nelson Woodford..... | is No .. | 214 |
| Sam Winbush | " " | 216 |
| Randolph Willis..... | " " | 232 |
| Linda Robinson | " " | 235 |
| William Garland | | 247 |
| John Burks..... | | 255 |
| Sam Moppin | | 258 |
| John Clark | | 320 |
| Jos. James..... | | 322 |
| James Byers | | 323 |
| Wm. H. Hues | | 325 |
| Spencer James | | 328 |
| John W. Jackson | | 329 |
| James Usher | | 333 |
| Andrew Lewis | | 334 |
| D. F. Woodard..... | | 335 |
| G. W. Randall | | 336 |

Jos. James is on the poll list as Josiah James. Two witnesses swear his name is Joseph or Joseph H. James, and that there was only this one James at the mines or among the colored people. And it appears that he was at the polls at the time this crowd voted. (Rec., 368 and 395.)

Shumate says James came in September (Rec., 395).

James Byers is on the list as James Byes; but Foster, a colored man, swears he gave *James Byers* his ticket and he saw him vote, and his name is just before that of Foster on the poll-list. (Rec., 382, bottom.)

VI.

To prove for whom these votes were cast contestant issued subpoenas for all these men. The returns on the subpoenas show that only a very few (three) could be found. (Rec., 306, &c.) All those who appeared either under summons from contestant or as witnesses for contestee declined to disclose for whom they voted when asked by contestant; and all those who came in the May crowd refused to say whether they voted

or not. (Rec., Geo. W. Lewis, 334; Jesse N. Carroll, 335; James Martin, 612; Geo. W. Lewis, 633; Hugh Lee, 643.)

It is shown generally that the men who employed these miners were favorable to Mr. Cutts; that they were brought to the polls by Republicans; that their votes were challenged by Democrats and Greenbackers (contestant's friends), and their votes urged and directed by Republicans. Republicans and men distributing Republican tickets gave them their ballots, &c. (Rec., 112, and from 326 to 391, inclusive.)

When the voter cannot, by reasonable diligence, be found, or, being found, refuses to state for whom he voted, it may be shown by circumstances. And here great latitude must be allowed. (McCrary on Elections, p. 306.)

By the above circumstances the contestant has shown all that can be shown in any case, that these colored miners all voted the Republican ticket, on which was contestee's name.

In addition to this it is shown by a colored man who went with the last crowd that voted at Harrison Township poll that he and another man supplied the whole lot with tickets that were voted, and that they were Republican tickets; and this is nowhere denied. (Rec., 367.) This crowd voted just before the polls closed, as shown by the poll-list (Rec., 349), beginning with No. 320 and ending with No. 388. This includes James Usher, James Byers, John Clark, Wm. H. Hues, Spencer James, John W. Jackson, Andrew Lewis, G. W. Randall, Hardin White, Joseph James, and D. F. Woodard, eleven in number.

In addition to this it is shown that these illegal voters all were Republicans, and in the celebrated "New Jersey cases" it was held that this alone was sufficient to warrant the conclusion that they voted their party ticket.

It is further shown by evidence and the poll-list that all the colored men from the coal mines voted together, there being two crowds brought to each poll at different times; and to illustrate the testimony on this point we take the testimony of Thomas S. Barton (Rec., 712):

Well, they came up in a wagon, with fifteen or twenty in it, a white man driving—a Republican—whooping and hallooing, "Hurrah for Cutts!" They would get out of the wagon, march them up to a couple of men who had tickets for them—Republican tickets. After they got their tickets they would go up to the window where they voted, and they would vote just as fast as they could be sworn in, and then they would load them up and start back with them after another load, and went through the same performance next time.

The same is shown by numerous witnesses as to all the colored men at both polls; and that when Greenback or Democratic tickets were offered they were refused.

The testimony is voluminous and uncontradicted, and no one can read it without being convinced that all the colored miners voted for contestee.

We have no hesitation in concluding that twenty-three votes should be deducted from the contestee on account of the colored vote from Muchikinock.

VII.

Contestant challenges numerous votes cast for the contestee as illegal in the various counties of the district. The contestee concedes seven of these as sufficiently proved to be deducted, and the proof shows that in Jasper County that of Thomas Hanson (Rec., 13), Valentine Rader (Rec., 14), C. F. Erickson (Rec., 20), Henry S. Hall, and Thomas Hall should be deducted as cast by unnaturalized foreigners. (See contestant's brief in reply, page 7.)

In Mahaska County, Patric O'Connor voted the Republican ticket (Rec., 108); was an idiot or imbecile; had been so adjudged, and was under guardianship. (Rec., 93, 94, and 108.)

In Appanoose County, that of Mr. Guernsey. (See contestant's brief in reply, bottom of page 10.)

Adding these votes to the twenty-three at Muchikinock and two at Albia makes thirty-two to be deducted from incumbent, and reduces his total vote to 18,108.

VIII.

The contestee claims that certain persons not qualified voters voted for the contestant in various parts of the district.

There is a technical objection to this claim which, under former decisions, rests upon a valid foundation.

There is in the record no answer to contestant's notice. There is on file an answer, but no proof of service except *ex parte* affidavit, and this shows no personal service on contestant. It has been expressly held in Follett *vs.* Dellano and in Boyd *vs.* Kelso that this cannot be accepted as proof of service. (2 Bartlett, 121.)

But even waving this it cannot be claimed that more than seven of the votes thus challenged can be considered illegal. Those of J. H. Fisher, L. Alfrey, and Joseph Fisher may well be considered doubtful.

They lived in the suburbs of the city of Centerville, which was in Center Township. A short time before the election the board of supervisors divided this township; these men having always voted at the court-house, and being legal voters of the county, voted at the court-house, in ignorance of the change; but we have included them as illegal votes; also the vote of Buce S. Pierson cast in John's Township, and that of William Dines, all of which were cast in Appanoose County; that of C. F. Renaud, in Jasper County, and that of A. W. Matox, in Mahaska County; and we think that this is all that should be allowed under this head. As to the others, they are fully discussed in the brief of the contestee and the reply of contestant, the latter beginning page 9. As to some of these votes there is no proof whatever that they voted except hearsay. As to others, there is no proof for whom they voted, except the voters' admissions, which, according to McCrary and the recent case of Cessna *vs.* Myers, is insufficient.

In nearly all of them the proof relied on by the contestee consists of some statement of the voter made in casual conversation to a witness under circumstances making them neither competent nor reliable.

But even if the evidence be accepted as competent and sufficient to prove the facts claimed, in no case would the facts thus established be sufficient to show the vote illegal. The objections in each instance are clearly stated in contestant's reply brief, beginning on page 9.

But if the list of illegal votes cast for contestant should be extended, then, under the same rules of evidence, the list of those cast for the contestee of the same class must be enlarged at least as much. In short, under any rule that may be adopted, applied fairly to both sides, this class of votes will be equal.

The contestee claims that two votes should be added to his and two deducted from contestant on account of error in official count in Washington Township, Appanoose County.

All the evidence upon this point is that one witness, on April 18, 1881, counted the ballots then in the box, and found this change from the official count.

There are two insurmountable objections to this: First, there is not the slightest proof that the ballots counted April 18, 1881, were those cast November 2, 1880.

Under the authorities quoted in contestant's reply brief, page 2, being McCrary on Elections, and Gooding *vs.* Wilson, decided in 1872, and we may add the recent case of People *vs.* Livingston, 79th New York Court of Appeals, 289, all directly in point, this must be affirmatively shown before this second count can be received as evidence.

Not only this, but it appears affirmatively that the box was exposed, and, so to speak, in the possession of a party unfriendly to contestant, and not an officer, with the key in the box, until April 16, and that before this recount he predicted accurately the change that a recount would disclose. (Rec., 41.)

The ballots were counted by one individual, and not produced and publicly counted before the officer taking the deposition.

Three of the election officers appear and testify to the correctness of the official count.

The evidence also shows an error of two against the contestant, as shown by a recount of the ballots in another township, made before the county canvassers a few days after the official count, but we have excluded this upon the same ground.

IX.

There is apparently an error of five in the official canvass in Jasper County.

The tally-list shows five votes less cast for the contestee than were counted for him. This tally list is a part of the official returns, and an inspection of the original shows clearly how the mistake in the final figures was made. But even laying this aside, the evidence on illegal voting shows so clearly and conclusively that contestant was duly elected, that we deem it unnecessary to venture upon any point in the least degree doubtful.

We recommend to the committee for adoption and report to the House the following resolutions:

Resolved, That M. E. Cutts was not elected as Representative from the sixth district of Iowa, and is not entitled to a seat on the floor of this House.

Resolved, That John C. Cook was duly elected as Representative from the sixth district of Iowa, and is entitled to a seat on the floor of this House.

CONTESTED-ELECTION CASE OF COOK *vs.* CUTTS.

Mr. THOMPSON, on behalf of a minority of the Committee on Elections, to whom was referred the contested-election case of John C. Cook *vs.* M. E. Cutts, from the sixth Congressional district of Iowa, respectfully submits the following

REPORT:

In the sixth Congressional district in the State of Iowa, at the election held November 2, 1880, M. E. Cutts and John C. Cook were opposing candidates for the office of Representative in Congress for that district. The State canvassers found and returned the vote as follows:

| | |
|-------------------|--------|
| M. E. Cutts..... | 18,017 |
| Cutts | 2 |
| <hr/> | |
| | 18,019 |
| <hr/> | |
| John C. Cook..... | 17,911 |
| John Cook..... | 2 |
| Cook | 5 |
| <hr/> | |
| | 17,918 |
| <hr/> | |
| C. Cooper..... | 1 |

Thereby finding a majority for Cutts of 101 votes, and the certificate of election was given to Cutts, who took his seat in the Forty-seventh Congress and still retains it. Within the time allowed by statute Mr. Cook served notice of contest on Mr. Cutts.

Mr. Cutts also, and within the proper time, made answer. No question arises upon the notice and answer, and they need not be stated.

From the notice of contest it will appear that many charges of fraud, illegal voting, &c., are made; but after the testimony was taken contestant relies almost entirely upon the alleged illegal votes cast by colored voters then employed at the coal mines in Mahaska County, at a place known as Muchachinock. It will therefore be unnecessary to take much of time or space in discussing matters unconnected with any other transaction.

It is proper here to state that the vote rejected by the county board of supervisors (who, by the laws of Iowa, are authorized to canvass the vote of the county), to wit, the vote of Cedar and Franklin Townships, in Monroe County, by which Mr. Cook was deprived of 213 votes which he should have allowed him, and Mr. Cutts was deprived of 121 votes which should be allowed, thus leaving a majority of 9 votes for Mr. Cutts in the final count. The question to be determined now is, has Mr. Cook, by satisfactory evidence, shown illegal votes cast for Mr. Cutts to overcome this majority. To do this he, as before stated, has relied chiefly upon the vote of the colored miners in Mahaska County, and claims that he has shown that 23 illegal votes were cast at that place for Mr. Cutts, to wit, James Usher, James Byres, John Clark, Jesse N. Carroll, William Garland, Charles Garrison, William H. Hughes, Spencer James, John W. Jackson, Andrew Lewis, Ernest Lindsey, John Burk, G. W. Lewis, Henry Lewis, Samuel Maupier, James Martin, Lindsey Robinson, G. W. Randall, Hardin White (or Nelson Woodford), Samuel Winbush, Randolph Willis, Joseph James, and D. F. Woodard.

To establish the fact that these men were not legal voters, the evidence of one Thomas Shumate, who was employed by the coal company to bring colored men from Virginia, is principally relied upon by the contestant, and who in fact did at various times collect men in Virginia, and bring them to the mines in Iowa, for the company in whose employ he was at that time; but at the time his evidence was taken he was not in the employ of the company. Mr. Shumate was not asked nor did he testify to anything concerning either John Burk or D. F. or Nelson Woodard, nor has any one attempted to show that they were not legal voters. We therefore drop these names and consider the 21 yet remaining.

As to Randolph Willis, before named, Page Irwin, on page 560, testifies that he came to the mines on the 4th day of April, 1880, and that said Randolph Willis came before he did. (See page 565 of Record.)

As to Joseph James, it does not appear that he voted at that election, and his name does not appear on the poll-list, and no one pretends that

he was seen or known to vote, and the only evidence on that point is one Foster, who, on page 368, says:

Question. Did this James go with you in one of these two wagons to the polls?

Answer. I could not say positively whether he did or not; I think he was at the polls; can't say positively whether he voted or not.

It is true that the name of Josiah H. James does appear on the poll-list; but in the absence of evidence establishing the fact that they were one and the same, we cannot presume they were.

It is evident from reading the evidence of Shumate that he made several trips to and from Virginia and brought several lots of persons to the mines, and it is equally apparent that he was greatly at fault as to dates, and was compelled to correct them in many instances, and while it is not controverted by contestee that a number of persons were brought to the mines on the 15th of May, 1880, he does insist that those who voted at the election were not of those, and that none of those who voted came later than May 1, 1880; in proof of this contestee has introduced the evidence of several of these men who, Mr. Shumate says, came on or after the 15th of May, to wit, Jessie N. Carroll, George W. Lewis, James Martin, and Andrew Turner, each of whom say that they came to the mines on the 1st day of May, 1880, and state circumstances by which they know the date.

We cannot reject their evidence without violating all the rules of evidence regulating human testimony, and by which we arrive at truth. No other of these twenty-one were found at the time of taking the evidence in this contest. Another fact must be stated: the character of Mr. Shumate for truth and veracity was impeached by between twenty-five and thirty witnesses, both white and colored men, many of whom had known him in Virginia and others in Iowa, and many of them having had dealings with him. A large number of witnesses, most of whom had had but a short acquaintance with him, gave him a good character so far as they knew. It is also admitted by Shumate while giving his evidence that he had repeatedly stated to persons, previous to his being sworn as a witness, that so far as he knew there were no illegal votes, and that not all had voted who had a right to. (See Record, 402.)

It is also in evidence that he advised men to vote whom he knew were not legal voters, and, as a matter of fact, they had been in the State but a few days (Record, 570, 604, and 582), and he states that he was a Democrat, and certainly not a friend of Mr. Cutts, and if he knew of any illegal votes it is clear he made no such revelation until after he had been discharged by the company, about July 1, 1882, although the contest had been going on from December, 1880, a period of more than one year. Another fact certainly proved is, that with these men who swear they came last of April or first of May, came the following women, to wit, Mary Irvin, Julia Bess, Annie Carter, Grace Maupin, Mary Bates, Minnie Garrison, and Mary Robinson, all of whom are shown by the pay-rolls of the company to have worked twenty-four days in the month of May, and received of the company pay for that time, and it is established by the evidence that these came before the 15th of May, and shows that Shumate was entirely mistaken. This payment for work is shown by the pay-rolls of the company, which were introduced in evidence by the contestant. True, that since this evidence was printed some one has marked on the margin of the pay-rolls opposite the names of these women, "*mistake; only worked 14 days in May.*" No one even insinuates that this was on the rolls when first introduced, or when

printed last session, and we may certainly conclude that by whomsoever made it was not by any friend of Mr. Cutts.

It is not necessary to conclude that Shumate is shown to be of bad repute for truth and veracity, for in any event it must be apparent that he was mistaken in very material matters, and does not even tend to prove that illegal votes were cast as claimed; but direct and positive testimony does show that those voting on the day of election were not the persons who came on the 15th day of May.

Much has been said in evidence about a certain book kept by the company, known as the roster. That book, by the consent of Mr. Cutts, has been put in evidence and considered by the committee; but it fails to prove any one thing material to this contest. It is not made up or kept as the witness seemed to think, as it has no dates; it contains individual accounts in certain months, but furnishes no dates from which to determine when any one came. Entries relative to work done by individuals first appear weeks and months after they had arrived and commenced work.

As a circumstance showing of how little value is the roster as reliable evidence, may be mentioned the fact that contestant in his printed argument claims that Nelson Woodford, John Brook, and D. F. Woodward were illegal voters, because their names appear on the roster after the names of those who came in May. And yet Mr. Shumate himself says that Woodford came in March or April, and sent some money to Virginia by him when he returned in May (page 401 of Record); and thus it is shown very conclusively that nothing accurate can be obtained from the roster.

It also appears that the name of Lewis Buckner is the last one on the roster, but the May pay-rolls show that he worked at the mines during the greater part or all of May. To illustrate:

Page 51, a man who came in March first appears.

Page 52, a man who came in March first appears.

Page 52, a man who came in April appears.

Page 53, a man who came in March appears.

Page 53, a man who came in April appears.

Page 54, two men who came in March appear.

Page 55, a man who came in March appears.

Page 55, a man who came in April appears.

Page 56, two men who came in March appear.

Page 57, one woman who came in April appears.

Page 57, one woman who came in March appears.

Page 62, two that came in May, and three others that came in April.

Page 62, are names of two persons who came in May, and after that are names of some who came in April.

And Mr. Shumate had to admit that a study of this roster would not aid him to fix dates; nor does it aid in any particular to fix the date of arrival of any man or woman brought from Virginia or employed by the company, for it clearly shows that no attempt was made by the book-keeper to set down the time that any one whose accounts were kept arrived at the mines, and we refer to the evidence of the men who Shumate thinks came on May 15, 1880. So that the facts and circumstances mentioned by which they fix the time of their arrival may be critically examined. And it will not do to say that, because they were ignorant black men, their testimony must be disregarded. They had more interest in knowing when they came and when they commenced work than Mr. Shumate could possibly have. This evidence is found as follows:

That of Page Irvin, Record, p. 500; W. T. Howard, 589; J. N. Carroll, 600; James Martin, 609; George W. Lewis, 631; and Andrew Turner, 652. Accepting the preponderance of the evidence on this point, aside from any question of character so emphatically involved, and for the purposes of deciding facts only, we cannot allow these votes to be lost to Mr. Cutts without disregarding the evidence; but in addition to these seven men, Reuben Hill, page 585; Taylor Jefferson, 615; G. C. Cane, 639, and Mr. Southal, 646, each of whom swear that a number of people came to the mines about May 1, 1880, and Turner says he was one of the number.

The presumption of the law is that any vote cast is a legal one; but in the case of these men, whose votes are claimed to be illegal, each of them was challenged by one of contestant's witnesses, whose evidence is found on page 328 of the Record, by name W. J. McFall. He states that he challenged the whole of the colored vote at East Des Moines precinct. Other witnesses show the same thing, and, indeed, it is not denied by any one, and that they each had administered to them the oath required by the statute of Iowa, which is as follows (Code of Iowa, 1873, sec. 620):

When any person is so challenged, * * * and the person insists that he is qualified, and the challenge is not withdrawn, one of the judges shall tender to him the following oath: "You do solemnly swear that you are a citizen of the United States; that you are a resident of this precinct; that you are twenty-one years of age, as you verily believe; that you have been a resident of this county sixty days, and of this State six months next preceding this election." And if he takes such oath his vote shall be received. (Iowa Code of 1873, section 620.)

It is not to be presumed that these men would or did commit willful perjury, and we would be compelled to so find if these votes are now excluded. And it would be equally unjust and reprehensible to say, from the evidence, that these men did not know what they were swearing to; for the evidence does show that when importuned by Mr. Shumate to go and vote, and advised by him that one day's residence was sufficient to entitle them to vote, they knew better, and in their evidence state their knowledge of the requirements of the law constituting a legal voter in the State of Iowa. I, therefore, without setting out any of the evidence, which, if true, reflects greatly upon the character of the contestant, and would create a strong belief that his course of conduct in procuring evidence was not such as a man honestly seeking facts and the simple truth to establish it would have resorted to, but as this vote is retained and allowed Mr. Cutts, it obviates the necessity of presenting in report much of the evidence which otherwise would have to be set out. It is proper to say that Mr. Cook claims that the vote of one Laciuis Bell, of Albia, Monroe County, be rejected, because of the evidence of A. E. Crosby, found on page 121 of the Record. Mr. Crosby states that Bell told him he had come from Kansas City two or three weeks before election, and that he had voted. If this vote was illegal, the evidence fails entirely to show for whom he voted, and we cannot take it from Mr. Cutts any more than we can from Mr. Cook. In answer to this: Question. "How did he vote, if you know?"—Answer. I do not know; I think he voted the Republican ticket." The first part of this is a full and complete answer to the question; his guess, as embodied in latter part, does not prove or even tend to prove any fact; the witness does not pretend that he asked him what his politics were, or that he had any means of knowing.

The evidence of Samuel F. Miller, on page 148, certainly shows beyond much doubt, that the vote of John Walker, at Albia, in Monroe County, was illegal and should not be counted for Mr. Cutts. The witness states

that Walker told him that his (Walker's) family resided in Leavenworth, Kansas; he told me his family was never here and that he was going back to Leavenworth. The witness states that Walker voted at the November election; that he saw him vote the full Republican ticket without a scratch. Contestant also claims that the vote of one H. C. Carson, of Keota, in Keokuk County, should be taken from Mr. Cutts. One F. M. Gortner, whose evidence is found page 24 of the Record, shows that Carson voted; he was challenged and took the oath. This witness is asked for whom Carson voted, and he answered, "I think he voted the Republican ticket. I seen a radical Republican taking him to the polls." And this is the evidence upon which the vote is asked to be deducted from Mr. Cutts. Simply because he was in company with a Republican going to the polls, and on that fact he guesses he voted the Republican ticket. It will not be claimed by any one that this is competent evidence, but the evidence of Mr. Warrington, found on page 223, clearly shows that Carson was a legal resident of the township and was a legal voter.

The same objections were made to one E. H. Rundell. The above witness, on page 27 of the Record, shows that this vote was challenged and the oath taken, and that he voted. The evidence of H. T. Willis (page 221) and the evidence of D. McFarlane (page 222) clearly establishes the legal residence of Rundell in Keokuk County, and a legal voter. The objections made to the vote of George C. Dutcher, of Lafayette Township, Keokuk County, is so well and fully answered by himself that we attach his answer, when a witness, as found on page 224 of the Record, as follows:

GEORGE C. DUTCHER, of lawful age, being produced, sworn, and examined on the part of the incumbent, deposed as follows:

Interrogatory 1. State your name, age, and place of residence.—Answer. My name is George C. Dutcher; am 68 years of age; and I reside in Keota, in the eastern precinct of Lafayette Township, Keokuk County, Iowa.

Int. 2. How long have you lived in Keota?—A. Two years, last month.

Int. 3. Did you vote at the general election held in Keota on the 2d day of November, 1880?—A. I did.

Int. 4. State whether or not you moved with your two daughters to Council Bluffs in the spring of 1880?—A. I did not.

Int. 5. Had you any intention of removing from said county at said date?—A. I had no such intention. In May, 1880, I accepted the invitation of a married daughter to escort her and her family of children to Colorado. I went with them, intending to return to Iowa, and did so return. It was never my intention to forfeit my citizenship in Iowa, and I have not done so. I left all my personal effects in Keota, intending to return there, and did so return.

Int. 6. Are you acquainted with Joseph Charlton, who resides in Keota?—A. I am.

Int. 7. Did you tell said Joseph Charlton, in his meat-market in Keota, prior to the time you started for Council Bluffs, that you were going to Colorado to go into business with your son-in-law?—A. No; I said nothing of the kind.

Cross-examination waived.

The objections to the vote of John Ranly, of Douglas Township, Appanoose County, is fully and satisfactorily met by the evidence brought out on cross-examination of the witness G. W. Taylor, found on page 78. It appears that Ranly rented his farm in that county, reserving a room in which he stored his goods in part, and went to Kansas in March, 1880, and returned in September. He was a legal voter, and the evidence fails entirely to show for whom he voted, but as he was a legal voter it is immaterial.

Daniel Hegans is also challenged, on the grounds that he was not a resident of Iowa, but his evidence, on pages 79 and 80 of the Record, shows that he was and had been for years a citizen of Appanoose County, Iowa, and was entitled to his vote.

George Probasco objected to because under age. The evidence of his father, Noah Probasco, does not fix his age, nor is it shown for whom he voted, and this vote cannot be taken from any one.

D. H. Elam objected for the same reason as above. His father, S. P. Elam, was the only witness to prove his age. His evidence is found on pages 85 and 86. He does not fix his age, and does not pretend to do so; nor does any one state how D. H. Elam voted, or for whom, and we cannot presume he voted for Mr. Cutts.

The following are said not to have been unnaturalized persons, all of whom say they voted for Mr. Cutts. The proof is questionable at least:

Thomas Hanson, page 13 of the Record.

V. Rader, page 14 of the Record.

C. F. Errickson, page 20 of the Record.

H. S. Hall, page 18 of the Record.

Thomas Hall, page 18 of the Record.

One O'Connor and Guernsey are questioned, but the claim is not sustained as to them.

The following votes are challenged by Mr. Cutts, and he claims they are illegal, and as they were counted for Mr. Cook should now be deducted. We have carefully examined the evidence relating thereto, and find—

1. That J. H. Fisher lived and resided in the township of Vermilion, but the evidence shows he voted in Center Township. (See Record, p. 232.) This vote cannot be counted. Conceded by contestant.

2. L. Alfrey of the same county (Appanoose), for the same reason, must be rejected. (See Record, p. 233.) Conceded.

3. The vote of Joseph Fisher—lived in Vermilion Township, Appanoose County, and voted in Center Township. (See his own evidence, Record, p. 234.) This vote must be rejected. Conceded.

4. The vote of John Roberts, of Appanoose County, is challenged for the reason that in 1878 he left the State and remained out of the State nearly two years. He pre-empted a homestead in Kansas, and voted in Chawker City, Kans., in the spring of 1880. (See Record, p. 236.) A residence of six months in Kansas gives a man a legal residence. This man was single; left the State; went to Kansas; took a homestead; voted at the election in the State; gained a residence; exercised the right of a citizen; then in August, 1880, returned to Appanoose County, Iowa, and voted at the November election, in about three months after his return. He was not a citizen of Iowa when he voted, and the vote is illegal.

5. William Dines, of Appanoose County, when called as a witness, says: I lived in Kansas before coming to Iowa over two years, and it lacked six or eight days of being six months before the 2d of November, 1880. I voted for Cook; J. C., I think, were his initials. (Record, p. 238.) Conceded.

This man had not gained a residence in Iowa, and his vote was unauthorized and cannot be allowed.

6. It is conceded that Bruce S. Pearson voted in Center Township, Appanoose County, Iowa, at the November election, 1880, to wit, on the 2d day of November, 1880, and that he afterwards, on the same date, voted in John's Township, in said county, and that he voted for J. C. Cook for member of Congress at each of said places on said day. It is also conceded that said Bruce S. Pearson was a legal voter, and entitled to vote in Center Township. Conceded.

This being equivalent to a double vote cannot be counted.

7. James Mahony was not a resident of Iowa, but was of Kansas. Wm. Crosby, page 241, testified as follows:

Int. 5. State, if you know, for whom he voted for Representative in Congress from the sixth Congressional district of Iowa at that time and place.—A. I stood within a few feet of him, a little to the rear and one side, and I saw him open out the ticket which I afterwards saw him vote, and it was the Democratic ticket, similar to those used on that day, all of which, so far as I observed them, carried the name of J. C. Cook as a candidate for Congress from the sixth Iowa district; and, so far as I could observe, there were no erasures on the ticket, but was what we would call the straight ticket throughout.

Int. 6. State at what precinct, if any, you saw him vote that ticket.—A. At the Centerville precinct, in Center Township, Appanoose County, State of Iowa.

Int. 7. State, if you know, where his residence was on the 2d of November, 1880, and state how you know.—A. A short time preceding the election, perhaps two or three weeks, I met Mr. Mahony one evening in front of the Keystone House, in Centerville, and engaged with him in conversation, in the course of which he told me that he had been absent all summer in Kansas and the Indian Territory; that he had taken a claim in Kansas, and that he had returned here on a visit, and intended going back again, and I believe he left here shortly after the election. At all events, I have not seen him; at all events, I understand he has been gone since about that time.

Int. 8. State if you know whether or not he had been absent from Appanoose County at any time previous to the election in 1880; and, if so, about how long.—A. I had not seen him for a number of months prior to the time I met him, as I before stated; I do not recollect just how long he said he had been gone, but it had covered a period of several months at least; he had just lately returned when I met him and had this conversation with him; at least so he stated.

Int. 9. State whether he was a man of a family or an unmarried man.—A. I think he was unmarried.

Int. 10. State, if you know, what ticket, if any, he was working for at the November election, 1880.—A. I think he was distributing Democratic tickets, and working for that ticket.

Cross-examination:

Int. 1. Mahony has been around here for the last ten years, hasn't he?—A. I am unable to state just how long he has been about Centerville; but he has been here irregularly for four or five years at least, possibly longer, prior to 1880.

Int. 2. What is your politics?

(Objected to as improper cross examination and immaterial.)

A. I am a Republican.

Int. 3. You have been taking a very active part in politics for the last few years in Appanoose County, Iowa?—A. Yes, sir; quite active.

W. O. CROSLEY.

This vote must be rejected.

N. Anderson, as shown by the evidence of A. Carlson, page 253, moved into Moulton [Washington] Township on the 14th day of September, 1880, from Elden, Iowa, and not in Appanoose County, where Anderson voted on November 2, 1880; not being in the county sixty days prior to election, was ineligible, and the vote cannot be counted.

9. Wm. Ellis was not a resident of the county sixty days before the day of election, as shown by the evidence of W. T. Myers, page 254, who says that Ellis moved into Appanoose County on the 20th day of September, 1880, and that Ellis told him that he had come from Alterton, Wayne County, Iowa; and J. R. Luse, on page 255, swears that Ellis voted for Mr. Cook; this vote should be rejected.

10. Sim Smith is challenged as being a non-resident of Appanoose County when he voted. H. W. Edwards, page 249, testified that Smith and his wife told him that they came from the State of Missouri, where they had lived for several years; that Smith had only been in Appanoose County about three months before election and left immediately after voting and has not been heard of since. Mr. Wm. Marshall, page 252, testifies that he was at the election, seen this Sim Smith vote at Moulton, Appanoose County, and that he voted the straight Democratic ticket. The vote was also illegal.

11. James Ewart voted in Albin, Monroe County. See the evidence of Samuel F. Miller, page 209, who says that Ewart voted a Greenback ticket with Mr. Cook's name on it, and Henry Miller, page 211, says that Ewart came from Colorado and was in the county only two or three months. It cannot be counted. Mr. Loyd testifies to same thing.

12. C. F. Renaud came from France and was never naturalized. Voted for Cook. (See his own evidence, Record, pages 189 and 190.) Cannot be counted. Conceded.

13. Charles Heyholt was born in Germany. No evidence that his father was ever naturalized, and he as a witness states that he never had or took out any papers. (See his own evidence, page 192.) This vote must be rejected.

14. C. W. Thompson came to Kellogg, Jasper County, on the 14th day of July, from New Mexico. Voted at November election the straight Democratic ticket and then left. (See evidence of Chas. Dutro, page 185.) Was not a legal voter.

15. Henry Ohler voted in Buena Vista, Jasper County. On page 187 the following:

B. W. BLACKWOOD, of lawful age, being produced, sworn, and examined on the part of the incumbent, deposed as follows:

Interrogatory 1. State your name, age, place of residence, and occupation.—A. B. W. Blackwood; age, thirty-seven; residence, Buena Vista Township, Jasper County, Iowa; farmer and stock-buyer.

Int. 2. What conversation, if any, did you have with Henry Ohler with reference to his right to vote in that county at the last general election?—A. I was passing the residence of his mother; I halted, and a conversation came up between me and Henry Ohler. He stated to me that he was only temporary located here, and had no intention of locating in this State or remaining in the same; that his home was in Nebraska, and that he intended returning there soon. He also stated that he was just here on a visit; that he had not been here to see his folks for ten years.

Int. 3. When was this conversation?—A. During the latter part of September or the fore part of October, 1880.

B. W. BLACKWOOD.

This vote rejected.

16, 17. The votes of William Price and W. M. Wilkinson, who voted at Oskaloosa, Mahaska County, are asked to be rejected for the reasons shown in the following evidence, pages 59 and 60:

W. F. HORAHAN, being of lawful age, produced, sworn, and examined, deposed as follows:

Interrogatory 1. State your name, age, place of residence, and occupation.—Answer. Name, W. F. Horahan; age, forty-five years; residence, Oskaloosa, Iowa; proprietor of coal mine.

Int. 2. Do you know William Price?—A. Yes, sir; I do.

Int. 2 [½]. Where was he during last fall?—A. He commenced working for me on the 4th day of September, 1880. He worked until about the 25th of the same month for me.

Int. 3. When he came to you for employment where did he say he came from, and what did he then say he had been doing?—A. He stated that he came from Illinois directly here to this place.

Int. 4. Had you ever known him before?—A. I did; he worked for me a short time the winter before.

Int. 5. How long did he work for you the previous winter; where did he come from, and where did he go to when he quit work?—A. I think he worked for me over a month, but when he quit work he stated that he was going to Illinois. I think he quit work in March. I did not know where he came from.

Int. 6. Had he been a resident of this country, or had he been a new comer, when you first employed him?—A. I could not say; I knew he was a coal-miner by his actions, and an old hand at the business, and a stranger to me.

Int. 7. Do you know W. M. Wilkinson; if so, when did you first know him, and for how long a time did you know him?—A. About the middle of September, 1880, a man by that name came to my place asking for work, and I gave him employment.

Int. 8. Where did he say he was from directly?—A. To the best of my recollection he told me he came direct from Minnesota.

Int. 9. Where did Wilkinson and Price board when they were working for you?—A. They told me they were boarding with Henry Colfleck.

(The contestant objects to each question and answer of the foregoing witness, for the reason that the names of the persons alleged to have voted illegally are not set out and contained in the incumbent's answers.)

W. F. HORAHAN.

These votes rejected.

18. Josiah McCoy voted at Black Oak, Mahaska County. The evidence of David L. Bowman, pages 71 and 72, shows as follows:

Int. 12. Do you know Josiah McCoy; if so, how long have you known him?—A. Yes, sir; I have known him for five or six years.

Int. 13. Did he vote at the last November election; if so, where?—A. Yes, sir; he voted at Leighton, Black Oak Township, Mahaska County, Iowa.

Int. 14. What are his politics?—A. He told me that he had voted the Democratic ticket, and always expected to.

Int. 15. State what you know about his having resided out of the State at any time prior to said election.—A. I think the first time he left till the last time he came back he was out over one year. He first went to Kansas in the fall of 1879; then came back in the summer of 1880, and went to Indiana. I did not see him any more until election day.

Int. 16. Was he a married man?—A. He was.

Int. 17. Did he take his wife, his goods, and effects with him?—A. Yes, sir; all but what he sold; he sold most of his goods.

Also, on page 66, the evidence of one John W. Walton, as follows:

Int. 8. Did Josiah McCoy vote at Black Oak Township at that election?—A. I did not see him vote.

Int. 9. State what you know about his having left the country, where he went to, and how long he was gone.—A. Some time during the summer of 1879 he sold off what effects he had, except his team and wagon, and went to Kansas. He came back early in the spring of 1880. Then he went to Indiana, and staid there until a few days before the election.

Int. 10. When he went to Kansas did he take his team and family with him?—A. He did.

Int. 11. What did he tell you, if anything, about what he had done in Kansas?—A. He said he had put in a crop of wheat and sold it.

Int. 12. State, if you know, for what purpose he went to Indiana, and with what intent.—A. From conversations with him and his friends, he went there for the purpose of making it his future home.

Int. 13. What was the politics of McCoy?—A. I have always understood from him that he was a Democrat.

This vote was illegal.

19. D. H. Rooduysen was not a citizen; he was born in Holland and never naturalized. See the evidence of W. G. K. Muntendam, page 70 of the Record, to whom Rooduysen admitted on the day of election the above stated facts. This vote was illegal.

20. A. W. Mattox was a minor. The evidence of James Hayes, on page 64, is as follows:

Int. 3. Are you acquainted with A. W. or Aaron W. Mattox; if so, how long have you known him? What is his age, and where does he live, and where did he live on the second of November last?—A. Yes, sir; I am. I have known him from his infancy, from the day he was born. He was (21) twenty-one years old in this last March (March, 1881). He is now working for a man by the name of Artemus Flan-ders, in Des Moines Township. On the second day of November last (the day of election) he was living with his brother, A. J. Mattox, in Jefferson Township. He went to the polls with his brother, and his father also was in the crowd.

Int. 4. How do you know his age?—A. Well, one thing makes me remember his age is that this Aaron W. Mattox and one of Henry Emland's girls are of nearly the same age. They were both of them born the same week. My wife, as it is now, worked for Mrs. Emland when this girl was born, and I was living with Samuel Coney, about two and one-half miles from there, at that time, and was intimately acquainted with the family at that time, and was frequently there. I was married in August, 1860, following the birth of this Aaron W. Mattox.

Int. 5. State what month and year he was born.—A. He was born in March, 1860.

Int. 6. Have you had any conversation with his father or brothers since the election about his age; if so, what did they say?—A. I have with two of his brothers, not with his father. They both said he was not twenty-one years old when he voted. But they said they thought he had done nothing wrong, from the fact that the board did not challenge his vote when he voted.

Int. 7. Who fixed his ticket for him when he voted?—A. Andrew J. Wharton did.

Int. 8. What kind of tickets were they?—A. Democratic tickets.

Int. 9. What was the politics of A. J. Wharton?—A. Democratic.

Int. 10. What was the politics of his father, C. Mattox, and of the brothers?—A. Democratic.

Int. 11. Do you know John McCormick?—A. Yes, sir.

Int. 12. How long have you known him?—A. Six years.

Int. 13. When did he go to Nebraska or Kansas; how long did he remain, and about what time did he get back to Mahaska County?—A. He went in the fall of 1879, and came back only a few days before the election in 1880.

Int. 14. Did he take his family with him?—A. He did.

Int. 15. What do you know about his having bought or rented a farm in Kansas or Nebraska, and having raised a crop, while he was gone?—A. I have understood that he bought a farm in Kansas and raised a crop on the same.

Int. 16. Did he vote at the last November election?—A. He told me himself he voted as I was going to the polls.

Int. 17. What are his politics?—A. His political doctrine and views are Democratic

Cross-examination:

Int. 19. Where was said Mattox born?—A. In Jefferson Township.

Int. 20. Do you remember the time of his birth, or is your statement as to his birth based wholly or in part upon the statement of your wife as to the time?—A. It is based upon my own recollection.

This vote is conceded and is rejected, as the man was a minor.

21. A. Craven, according to the evidence of Ezekial Ferris (pages 54 and 55), left the State of Iowa, a single man, about July, 1879, and came back about September, 1880; voted the Democratic ticket; during this time he was in Missouri and Nebraska; lost his residence, and was not a legal voter.

22. A. Bullman: By his own evidence, on page 266, it is shown that he voted for Mr. Cook; that in March, 1878, he left Iowa and went to Coffeyville, Kans.; remained there until he gained a residence; commenced a suit in the court of Kausas for divorce and obtained a decree; married in that town in 1880, and came back to Iowa in June, 1880. It is immaterial what his intentions were; the fact remains that he gained a residence in Kansas, and the laws of that State require a residence of six months before a man can sue for divorce. (See statutes of Kansas, sec. 3872.)

J. W. Shelley refused to take the oath required by statute. The evidence of Josiah Stark, page 293, states that Shelley lived nearly everywhere; also the evidence of his father, B. M. Shelly, page 296. This voter refused to take the oath prescribed by statute, as he would not swear that he had been in the county sixty days, and that part was omitted and his vote received. No one can doubt the illegality of this action on part of the judges. This vote rejected.

It will be seen that in the conclusions reached that the balance of illegal votes as found is in favor of the incumbent to the number of twenty, and this leaves the majority for him as found to be fifteen votes at least.

The following resolution is recommended:

Resolved, That Marcenus E. Cutts was duly elected as Representative from the sixth Iowa Congressional district to the Forty-seventh Congress, and is entitled to the seat accordingly.

Mr. RANNEY, in the case of Cook vs. Cutts, makes the following report:

I concur in the conclusion reached in the minority report made by Mr. Thompson that the contestee should be declared entitled to retain his seat; but I prefer to report the case as it presents itself to my mind.

The case may be properly stripped of much of its detail. It is well, however, to state briefly what is thus summarily disposed of.

I.

I allow for the contestant the two votes cast for "John Cook," the five cast for "Cook," disallow the vote cast for "C. Cooper," count the ninety-two net majority in the votes of Cedar and Franklin Townships, which were rejected in the canvass because of alleged defective returns.

I allow for the contestee the two votes cast for "Cutts." Also, one vote which got into the wrong box in Washington Township, and was rejected. If not counted, thirty votes cast and counted for contestant should be disallowed for same reason. (Record, p. 213-14-16-19.)

I take the certificate of return made in the canvass of the votes in Madison Township, in Mahaska County, disallowing the vote claimed by the contestant. It is sworn by one witness that on one ballot the name of "M. E. Cutts" was erased, and "John C. Cook" written thereon "opposite the head of the State ticket." We have not got before us the original ballot or a copy of the same for construction. The officers of election did have the original, and construed the same by personal inspection. It is impossible to determine from any evidence before us for what office the name "John C. Cook" was designed.

I allow the official count in Jasper County and Appanoose County to stand in the two instances where there was a discrepancy between the certificate of return and the tally-book of five votes in one case and of two in another. It may possibly be true that there was a mistake in the count in the case of the five votes; but on the one side we have only the canvass and return as made and the tally-list. Taken alone, I think the return is higher evidence than the tally-list. But the evidence of the manager is that the vote was as returned, although he does not testify specifically as to how he knows, or where he gets the figures which he swears to. How the discrepancy occurred is not explained by any evidence *aliunde*, unless by the fact that by the usual course pursued in counting the ballots all are first counted and the tally-list thus made. The divisions of five in the tally-list may not have been made so as to conform to the aggregate vote. It is, therefore, left mostly to conjecture as to what the explanation is, and I take the return, supported faintly as it is by the manager. As to the other discrepancy it is explained, and the oral evidence is such as not to disturb the official count when used to explain the alleged discrepancy.

This leaves contestee with a majority of ten to this point.

II.

I now come to the issues seriously in dispute.

There are claims and counter-claims preferred by the respective parties relating to scattered individual votes, independently of the colored vote from the mines. Contestant concedes eight illegal votes as cast for himself in this class, and claims to have proved seven as cast for contestee (second brief, p. 19).

In case of five of the latter class, Hanson (13), Rader (14), Erickson (20),

two Halls (18), we have only their own evidence respectively to prove the facts. The claim is they were not naturalized. One of them proves it, if at all, by stating what his father said about his having been naturalized. It is hearsay and not competent. The presumption of law is that they were naturalized, as they voted. I do not deem it wise or safe to rely on the evidence of the voter alone in these instances to prove the contrary. He is presumed to know the law, and is alleging his own turpitude when, if true, he calls upon us without adequate proof of an innocent mistake to believe that he violated the law and voted illegally, and one of them after being challenged. I can place little reliance on what he now says to stultify or convict himself of an offense. I cannot omit to call the attention of the House to the evidence adduced to show that contestant was engaged in manipulating witnesses in his own behalf by the use and promise of money; will not express an opinion on that point, but only refer to the record for others to judge, as, if true, it serves to destroy or seriously impair confidence in evidence which he adduces. (Record, pp. 620, 590, 637, 588, 618, 602, 590, 532, 533.) Contestee makes great reliance on this in his brief.

O'Connor (93, 94, 108) is attempted to be proved of an unsound mind when he voted. The evidence adduced does not come from experts, and is for this reason and otherwise incompetent or insufficient. The letters of guardianship were issued in May, 1875. The presumption of law must prevail here as against this evidence irrespective of a question of law. Besides, R. P. Bolles (p. 58) testifies that he (a lawyer) and Mr. Havens were the witnesses who got O'Connor naturalized in October, 1880, Judge Blanchard administering the oath. The witnesses were Greenbackers in politics. This would hardly be done if O'Connor was an imbecile or of unsound mind, as pretended now. They probably got it done so he might vote their ticket, and because he voted the other way they now deem him incompetent to vote!

D. R. Guernsey, the seventh (Record, 74, 75, 76, 84), is claimed not to have his home in John's Township, where he voted for Cutts. His was the only evidence, and he swears to his home being in John's Township. Claim of contestant disallowed.

If anything more is needed to dispose of the first five it will be seen that in case of Hauseon part of the requisite evidence consists of an alleged statement of his father, which is not competent. There being a declaration of intention there was a record in court, and the same should have been put in evidence by copy as the best evidence. Same is true of Rader.

The majority report errs when it says contestee concedes seven illegal votes as cast for him. He does not concede it only as proved "*by evidence more or less direct and satisfactory.*" (Brief, p. 26.) To me it is *less* than satisfactory. He does not admit that they should be deducted, but says "*if they should be,*" &c. It is not in the power of contestee to give away the rights of the public and allow another man to take the seat even by consent, to the detriment of the public and the Treasury. Whereas contestant alone is interested in the result now, and that only from personal pride and pecuniarily, and I should give more heed to his concession as affecting his claim made in the contest if there was occasion for it.

The eight votes cast for himself illegally, as conceded by contestant, I reject as proved also. The evidence satisfies me that the illegal votes cast for contestant exceed eight in number, and that ten at least are satisfactorily proved, leaving a balance of ten in favor of the contestee on this miscellaneous class. Those named by contestant and conceded

are the two Fishers, Alfrey, Pierson, Dines, Renaud, and Mattox. I add William Ellis (p. 254), Shelly (pp. 293, 258, 265, 261), and Roberts (p. 236). Shelly was challenged and allowed to vote wrongfully, and is not now shown to have been an elector.

Mr. Thompson has gone over them and comes to the conclusion that there is a balance of fourteen votes in favor of the contestee, and his report furnishes ample means of getting at the evidence so as to verify or refute his conclusions. I disallow the claim as to the vote of John W. Walker, which he allows, and find it should be counted for the contestee, deeming the evidence relied upon by contestant in respect to that as incompetent and insufficient. My conclusion upon present views is that there is a balance of ten votes in these claims and counter-claims in favor of the contestee. As much doubt is thrown on twenty as there is on sixteen of the colored vote hereinafter considered.

III.

I now come to the issues presented which constitute the chief field of contention.

1. As to the Albia mine, I find that the evidence establishes no claim which should be allowed in favor of the contestant, unless it be the votes of Lucius Bell and John Walker. As to those votes the evidence is not competent, and contestant in his brief, p. 5, so concedes. The same class of evidence will support several more of the individual claims made by contestee, alluded to, than I have allowed above, and if competent they should be allowed him. The majority report adopts a rule of evidence in one case different from what it does in the other. I reject the two said votes, and follow the same rule of evidence in other cases.

2. As to the voters from the Munchichinock Mine :

The claim is that the following names appear on the poll-list, and that they belong to and represent persons who voted for contestee, but who went to Iowa either on May 15, 1880, or later :

Des Moines Township—

| | | | |
|--|-------|---------|-----|
| Jease Carroll ..... | ..... | is No.. | 31 |
| Earnest V. Linsey (see Rec., 99) ..... | ..... | " " | 46 |
| James S. Martin (see Rec., 99) ..... | ..... | " " | 47 |
| George W. Lewis (see Rec., 99) ..... | ..... | " " | 48 |
| Henry Lewis (see Rec., 99) ..... | ..... | " " | 184 |
| Charles Garrison (see Rec., 99) ..... | ..... | " " | 185 |
| (Rec., 98 and 100, &c.) | | | |

In Harrison Township—

| | | | |
|-----------------------|-------|---------|-----|
| Nelson Woodford ..... | ..... | is No.. | 214 |
| Sam Winbush ..... | ..... | " " | 216 |
| Randolph Willis ..... | ..... | " " | 232 |
| Linda Robinson ..... | ..... | " " | 235 |
| William Garland ..... | ..... |  | 247 |
| John Burks ..... | ..... |  | 255 |
| Sam Moppin ..... | ..... |  | 258 |
| John Clark ..... | ..... |  | 320 |
| Josiah James ..... | ..... |  | 322 |
| James Byers ..... | ..... |  | 323 |
| Wm. H. Hues ..... | ..... |  | 325 |
| Spencer James ..... | ..... |  | 328 |
| John W. Jackson ..... | ..... |  | 329 |
| James Usher ..... | ..... |  | 333 |
| Andrew Lewis ..... | ..... |  | 334 |
| D. F. Woodard ..... | ..... |  | 335 |
| G. W. Randall ..... | ..... |  | 336 |

They amount to twenty-three in number. It is claimed that they were all illegal, there not being one of the requisite qualifications of a residence of six months in the State prior to the day of election.

This presents a question of fact purely to be determined under rules of law and upon the evidence adduced. I find that, on clear and virtually uncontested evidence, this number of twenty-three should be reduced at the outset to eighteen.

The name of "*Josiah James*" appears on the poll-list. This is said to be *Joseph H. James*. A man of that name is examined (Rec., pp. 618, 625), and said to be the one, and he swears most positively that he did not vote at all. No one proves that he did vote. His name is not on the poll-lists, unless Josiah James applies to him, and it cannot be said that he and Josiah James are the same person from correspondence of names. Even Foster (Rec., 368), who was present, won't swear that he voted.

Contestant himself admits what is true, that Major Shumate does not state when Woodford, Burke, and Woodard went to Iowa (Brief, p. 7).

I find no other evidence which does prove or tend to prove when they went, or that they went after May 2. Indeed, as to Woodford, Major Shumate swears in effect that he (Nelson Woodford) sent back money to Virginia when he went back for the third party (Rec., 401).

As to William Garland, Page Irwin says there were two persons by that name, and this is not contradicted. Hence it cannot be found which one Major Shumate refers to in his evidence, or which one voted (Rec., p. 565).

Page Irwin swears (Rec., p. 565) that Randolph Willis came to Iowa before April 4, 1880; was there before himself, and he came on that date.

Major Shumate only testifies as to Willis that he did not come in either of the first three parties, without stating or showing that he knows when he did come.

I therefore lay out of the claim five names from the alleged twenty-three as cases where the evidence requires it.

If Hardin White is intended to be included, instead of Nelson Woodford, it will not change the result.

The remaining eighteen must be divided into two classes: Seven names are claimed to apply to persons alleged to have come in the lot which arrived May 15, 1880. These seven are Jesse N. Carroll, Charles Garrison, Geo. W. Lewis, Henry Lewis, Samuel Moppin, James S. Martin, and Linda Robinson. All the rest are claimed to have come after May 15, 1880. Before going further, however, I desire to lay down and premise the rule which should govern the consideration to be given to the evidence. It is the rule which prevails in all election cases, that all votes cast are presumed to be legal. That presumption is fortified and reinforced in the present case by the uncontested proof, that all of the colored voters were challenged at the polls, and each one took the oath and swore, after due warning and openly, that he had resided in Iowa six months before the election. Contestant must overthrow this presumption, thus reinforced and fortified, and this by evidence which is competent, credible, and sufficient in quality and quantity to produce conviction. It is not enough to mix the thing up or to create a doubt about the right of the parties in question to vote. The evidence should be such as to show a certainty, as in fact it is necessary to prove what would be sufficient to convict some eighteen different men of very reckless swearing tantamount to direct perjury. Evidence which does this should be above suspicion and free from doubt. Members are not to be

deprived of their seats at this late day of the term and new ones admitted on the testimony of one man, at least when his evidence is dubious and much shaken. I will consider the classes separately.

IV.

As to the first class, it must be conceded that upon the preponderance of proof there was a company of negroes which arrived in Iowa on the 15th day of May, 1880, composed of a few men, not over ten in number, and probably not more than six or eight, and the rest being women and children, largely the families of those who had gone before. If the result depended upon that fact I should not deem it necessary to express any dissenting views.

The preponderance of the evidence also seems to prove that persons bearing the names given in the said first class, all save Samuel Moppin, came in some company which arrived in May, either the 1st day or the 15th day. The only evidence I find as to him comes from Maj. Thomas Shumate (Rec., p. 325), who says: "*He came with the third party (May 15), is my recollection; either that or the fourth party; am not sure which.*"

If he is assumed to be the person whose name appears on the poll-list as "Samuel Mappine" (Rec., p. 106, No. 258), I think the claim, as to him at least, is not established. I do not credit the statement of the witness, indefinite and uncertain as it is, for reasons hereafter given under the other head. Besides this, there is not sufficient evidence to show the identity of "Samuel Mappine," as written on the poll-list, and "Samuel Moppin," as named to the witness, with nothing else to connect them, especially as the negroes were shown, many of them, to have several different names. Neither is there any evidence as to how the man giving that name voted, unless we assume that all the colored men voted for contestee, which is not allowable. It appears that there were some of them (twelve or fifteen, more or less) Greenbackers. (Jones, p. 557-8; Irwin, p. 566.)

As to the other six, the question is whether they came May 1, as contestee's evidence tends to prove, or May 15, as contestant contends. It is not necessary to determine this, as the result in my view does not depend on it. But as so much stress is laid on it by the majority, as though it did, I will state how it stands and leave it there.

Four of the number, viz, George W. Lewis, Henry Lewis, Jesse Carroll, and James Martin, swear with great positiveness that they arrived May 1, 1880 (Rec., 631, 600, 609).

Paige Irwin, Taylor Jefferson, William T. Howard, Andrew Turner, William Southall, G. S. Caul, David J. Campbell, and others swear to the same, and all fix the dates by other facts, and feel perfectly certain. These men are not charged with illegal voting, and are disinterested (Rec., pp. 615, 565, 652, 654, 646 639, 626.)

Now, it is said that all these men are mistaken and even perjured. The date of arrival of the so called third lot was originally fixed by Major Shumate as near the last of May. He fixed it by the fact, which he swore to, that he gathered the crowd when the Staunton court was in session, which met the third Monday of May, and that the next prior crowd was the last of April (Record, 322-3); that it took three weeks to gather up and get the crowd together in Virginia, and about four days' travel by rail between Virginia and Iowa. He subsequently finds, as he says, a letter which fixed the date of his arrival in Iowa on May 15. (Record, p. 392.) A railroad conductor swears to taking a company (of colored women and children mostly) May 15, identifying the number of

the car by a return of his. If the letter is genuine, and the return of the conductor is reliable, this is potent evidence to fix the fact that a company did arrive May 15. It is to be observed that the genuineness of the letter depends wholly upon the evidence of Major Shumate. The railroad return contains nothing but a date and the number or description of a railroad coach used on May 15. Other agents and the conductor supply only that there was in it negroes consisting mostly of women and children (Rec., p. 433-4).

There is a serious conflict of testimony, unless there was another lot of colored persons between April 4, 1880, and May 15. There is no positive testimony that there was. But that alone would serve to reconcile much of the conflicting evidence. It may be safer to infer as probable that there was another than to find that twenty-three men swore falsely when they took the oath at the polls after full warning, that they had been residing in Iowa six months, and that four of them repeated that falsehood when testifying in this case, and that Page Irwin, Taylor Jefferson, William T. Howard, Andrew Turner, William Southall, G. S. Carl, and David J. Campbell, disinterested persons, having the means of knowing and good reasons to note the event (as they say they did), also swear falsely, or are mistaken.

The pay-roll for May, 1880, shows that Mary Irvin, Julia Bess, Annie Carter, Grace Maupin, Mary Bates, Minnie Garrison, and Mary Robinson, all of whom confessedly came with what is called the May crowd, worked and were paid and allowed for twenty-four days' work in May, and this is entirely inconsistent with the alleged coming on May 15. Some one, not known, has written a memorandum in pencil against their names, that this is an error. Was not so printed in the record, and the inference is that some one since then has inadvertently made this pencil memorandum by way of comment on the margin. The original entries are too formal and too particular to raise any probability of error originally, and if the pay-roll is evidence and reliable, it seems to be very significant as entirely inconsistent with the claim that the crowd in which these persons came arrived as late as the fifteenth day of May.

The pay-roll for April is not produced and is not before the committee. If it were it is possible that the mystery might be cleared up. It is true that some of the names of the persons in question appear on the May pay-roll. The days' work do not appear save in one instance. The men are allowed job or piece work only. But the evidence is (Rec., p. 113-9) that the pay-rolls did not contain all the names or all the work done. Men worked outside of the mines, and some worked for other parties than the company. Witnesses swear to remaining some time without work and to being engaged in other things. Up to what day the pay-rolls run or were made up don't appear satisfactorily (Rec., p. 113-9). Strictly speaking the pay-rolls are not competent evidence.

There is another significant fact. It appears that Major Shumate was in Iowa till the 4th or 5th of May. Dr. Witherill swears to meeting him on the 4th or 5th, when he said he was going to Virginia for more men. He himself swears that he left the 3d day of May. Allowing that he got to Virginia the 6th and started back the 12th, this would give him but six days, one of them Sunday, in which to gather and get aboard the train a company of negroes, women and children, whereas he had sworn before that it took three weeks to do it. There had been an interval of about six weeks between what he calls the second lot and the May crowd, to wit, from April 3 to May 15. During that period there had been time for an intervening company. He has put in what purport to

be the letters which he wrote to his wife from Iowa, in April, and the last one, as per the wrapper, was mailed the 17th of April. This would give him thirteen days to go and get an intervening lot, more than he says he took for the May crowd, as called by him. He speaks of having a letter of April 26, but it was not shown or put in evidence, and that date as printed must be an error, as he don't annex letter or cover. He for some reason withholds and does not show the letters written after April 4, saying they relate to private matters. Had he shown them, so as to make that fact manifest, it would have been more satisfactory. He had sworn that the interval between the second and the third lot was the shortest of them all, and to being in Virginia when the court was in session, as that was a good time to collect negroes. He may be right about this, after all, and the third Monday of April may have been the term of the court which he had in mind. Even after he had found the letter of his wife, he was not willing to admit and say positively that he was mistaken about what he had said in relation to being at Staunton one of the times when the court sat (Rec., p. 402). There seemed to be lingering in his mind even then an impression that he was there at court time. April was the only month in which it could have been so if at all. If this was so the fact would reconcile the evidence on *this point* largely.

It is clear that all who went May 15 were mostly women and children (Rec., pp. 436-40).

It may be that there was a delay in getting so many women and children, and that the men and some of the women and children went on before in an earlier train.

Nothing else as an assumption will relieve Major Shumate from his pretense that he could start from Iowa May 4, go and return by May 15.

E. D. Young (Rec., 437), who had charge of the conductors, says :

Int. 4. Did a freight train, with a passenger coach attached containing colored people, run from Marshalltown south on the 1st day of May, 1880?

(Objected to, the same as to interrogatory 2.)

A. I could not say; I am almost positive there was not.

Int. 5. Do you recollect of a lot of colored people being carried on a freight train, with passenger coach attached, some time in May, 1880?

(Objected to, the same as to interrogatory 2.)

A. I do.

Int. 6. Will you please state what date that was, and whether it was the 1st day of May, 1880, or later.

(Objected to, the same as to interrogatory 2.)

A. We might have had two lots of colored people in. The one that I remember of was about the middle of May.

Int. 7. Do you recollect of any going south from Marshalltown on the 1st day of May, 1880?

(Objected to, the same as to interrogatory 2.)

A. No; I do not.

Int. 8. What proportion of the crowd that you remember as going down about the middle of May was composed of women?

(Objected to, the same as to interrogatory 2.)

A. I have no means of knowing.

The long interval, from April 3 to May 15, between those two lots is best explained by this supposition. If the May lot was divided that serves to explain why the draft drawn by Shumate, on May 12, 1880, was only \$460, when the fare for sixty persons at \$12 each (the price sworn to) would be \$720. Otherwise this fact is unexplained.

All that can be said is that there is too much doubt as to what should be called the May crowd, whether it was on or just before May 1, or May 15, or whether there was one on both days. I have a right to assume any reasonable hypothesis which will harmonize the evidence, and it is probable there were two lots in May.

Much stress is attempted to be laid on the fact that some of the witnesses speak of the "May crowd." The word is rather assumed by the questioner, and became a sort of designating term generally. The witnesses of contestee speak of one crowd and those of contestant another when the "May crowd" is spoken of.

It is true that Mr. Foster and his wife, colored, swear that the May crowd came May 15, and that she came in the latter. She first swears in the Record (p. 507) that she left March 11. The examiner goes on and assumes that she said May 15, and she then adopts that. Mr. Foster admitted that he was to have \$200 from Mr. Cook, and he was evidently swearing under a belief that that was so. His wife comes up to join and help him. Shall they be believed while the evidence of all the other colored people is scouted as untrue and perjured? It seems with some people to make a difference on which side colored witnesses swear, whether they are considered credible or not.

William Howard says he and George Lewis, Henry Lewis, James Martin, Jesse Carroll, Charles Garrison, and James Carey were of the May crowd. (Rec., 589.)

Jones says, "George W. Lewis and Jesse Carroll came in the May party; don't remember the others." (Rec., 559, middle.)

James Martin himself says, "I came in the May crowd" (Rec., 509, int. 9), and that George W. Lewis and Carroll were in the same crowd; don't remember the names of the others. (Rec., 609.)

George W. Lewis himself says, "I came in the May crowd, as it is commonly called," and remembers William Howard, Henry Lewis, and Linza Robinson. (Rec., 631-2, ints. 3 and 26.)

Andrew Turner also says he came in May crowd. (Rec., 653.)

This may be all so, and yet the "May crowd" referred to be that which arrived May 1. The contestant is ready to take the facts as sworn to by contestee's witnesses when they say "May crowd," because he likes that much. Yet he rejects all the rest if that don't suit him, and says it is perjured testimony.

It is not necessary to examine the evidence as to how the persons named voted. Four of them have declined to answer, as they had a right to do, and as did others, the legality of whose votes was not in question. No inference is to be made against their truthfulness on that account. All the colored men exercised their legal privilege only in declining to answer. Circumstantial evidence is competent to prove how they voted. It is quite probable that most of the colored persons voted the Republican ticket, but we cannot assume that from the single fact of color. There were some Greenbackers among them. It is not definitely proved for whom all of them, in fact, voted. The circumstantial evidence is quite strong. The only difficulty is, it don't reach the particular individuals in question to any great extent.

V.

I proceed to the second class of alleged illegal voters named. What is the evidence adduced? Is it credible? Is it reliable? Is it definite and certain? Is it plenary in quantity and quality, so as to work and produce conviction and establish the claim predicated, as against the strong presumptions existing, and the oaths of the electors at the polls?

It all comes from one witness (Shumate).

There are no pay-rolls which relate to them, and in evidence. The roster furnishes no competent evidence, at least none of the slightest weight. Major Shumate referred to it in his cross-examination, and is

compelled to confess that he cannot fix by it the dates when the men came, unless it be by association. He was the only witness produced whose memory could be aided by the roster, and who knew anything about it, and he has not undertaken to do what is required by association even. Mr. Thompson has demonstrated what is otherwise apparent, that the roster shows nothing which can be relied upon to settle the question in dispute. If it does I do not regard it as competent evidence. Not being kept by the witness it could not legitimately serve to refresh his recollection even.

If there is any evidence, therefore, on this second class except that of Major Shumate, I have been unable to find it. No one has pointed it out either in argument or the briefs. The majority report refers to none. Shall Major Shumate be believed, and has his evidence weight enough to overcome the said presumptions? We must take him as he appears on the record evidence.

Assertions and counter assertions and denials are easy. I will go into details, and give reasons for my conclusions. Before doing that, however, I will divert and make some general observations, which may as well come in here as anywhere.

It is not the fault of the House or the Election Committee that the determination of the case has been delayed so long. Contestant's case was not ready to be heard when this Congress met. The record then showed no case, and he applied and got leave to take more evidence, and that was not taken till very late last summer, so that the case could not be taken up and considered until the present session. The record evidence is voluminous, conflicting, complicated, and difficult of solution, and no conclusion has been reached until now. Contestant is claimed, upon the contention of the contestee (with some plausibility, at least, I must confess), to have obtained leave to take further evidence, upon grounds stated in affidavits, which prove to have been rather questionable. And the committee granted leave in this case in the exercise of a liberality which was not practiced in two other cases where a similar application was made. But I do not propose to pass upon these points, preferring to pass over the personal attacks which have been made with some acrimony by each party upon the other. On the one side there is a charge of making false affidavits to get further time, and some evidence offered as to the corrupt use of money in obtaining testimony; and on the other, a charge of sharp practice, and even of virtual stealing, in getting possession of and withholding the roster already alluded to. Not considering the parties to be on trial, I have endeavored to dismiss these charges from my mind, except so far as they necessarily affect, as they do somewhat, the other evidence in the case. Had the roster not been ultimately produced, as was promised by contestee early, it would have been subject to all reasonable inferences adverse to the contestee. But it was produced as promised, and then contestant declined to take and put it in evidence on the record. He seemed to want it very much, if he could not get it, and dealt in severe accusations because he was denied it at once, although it was incompetent evidence in and of itself if produced. When it was produced he did not seem to want it, and did not use it. It was said to be desired to aid Major Shumate in refreshing his recollection in order to fix and determine dates and the lot of negroes in which the persons in dispute went to Iowa. Contestee says he distrusted the witness knew that the roster, not being kept by him, was not competent either to refresh his recollection or otherwise; and he did not mean to let him

have it in the first place to aid him in constructing a false story, and promised to produce it after contestant's evidence was in, and did do so.

After witness had testified for contestant the roster was shown him, and all needed help by it furnished, but he was constrained to admit that the roster did not do what he supposed it did, and that he could only use it to fix things by argument or association based upon it. It was of so little use in this regard, as it proved, that the matter was dropped by the witness and contestant, although the question of time was waived by contestee. The contest in regard to the roster was re-opened in the argument before the committee, but was cut short upon suggestion made that possibly there was no objection to its being put in evidence then, and thereupon contestee said he did not object to it, but consented that it might be so far as competent evidence, and it was put in evidence subject to that objection alone. This is all that needs to be said on that point.

What is Major Shumate's evidence in its full length and breadth, as bearing upon the identity and residences of the voters in question in the second class named? I give it in the language of the record:

1. Int. Can you tell me from memory whether James Usher came into the State before or after May, 1880?—A. James Usher did not come either with the first, second, or even third lot; he came with the fourth party.

2. Int. How about James Byers?—A. He did not come with the first, second, third, or fourth party; he came with the fifth party.

3. Int. How about John Clark?—A. John Clark did not come with the first, second, or third party.

Int. How about Jesse N. Carroll?—A. I am not sure whether Jesse came with the second or third party; my impression is he came with the third party.

4. Int. How about William Garland?—A. He did not come in either first, second, or third party; he came in the fourth party.

Int. How about Brooks Harris?—A. He came in the first party.

Int. How about Charles Garrison?—A. I am not sure whether he came in the third or fourth party; my impression is he came in the fourth party.

Int. Are you certain he came in neither the first nor second party?—A. Yes, sir; I know that.

5. Int. How about William H. Hues?—A. He came there with the fifth or sixth party; he is a man that I have known all my life, nearly.

6. Int. How about Spencer James?—A. Spencer James came with the fourth or fifth party; he is a man that has worked for me, on and off, for several years in Virginia.

Int. When did John W. Jackson come to Iowa?—A. One Johnny Jackson—I don't know about the W. being in his name—he is the only John Jackson I know of; he was one of the colored men; he came with Usher in the fourth party in July, 1880.

Int. How about Jasper Kinney?—A. He came in the second party.

Int. How about Christopher Lewis?—A. He came in the second party.

Int. How about Andrew Lewis?—A. Andrew Lewis did not come in any of the three first parties; he came to the mines in October, 1880.

Int. How about Ernest Z. Linsey?—A. Charles Linsey came in second party: Ernest Linsey came in fourth party.

Int. How about George N. Lewis and Henry Lewis?—A. I now remember that Charles Garrison and the two Lewises, George W. and Henry, came in the third party in May.

Int. When did Samuel Moppin come?—A. He came with third party, is my recollection; either that or the fourth party; am not sure which.

Int. When did James S. Martin come?—A. He came with third party.

Int. When did Annias Randolph come?—A. He came with first party.

Int. When did Linza Robinson come?—A. He came with third party, is my recollection.

Int. When did G. W. Randel come?—A. I am not positive when he came, whether with third or fourth party; he did not come with the third; it must have been later.

Int. When did Edward Willis come?—A. He came in 1881. Sam. Willis came with second party.

Int. How about Hardin White?—A. He did not come with the first, second, or third parties; he must have come later.

Int. How about Sam. Winbush?—A. He did not come with either of the first three parties.

Int. How about Randolph Willis?—A. He did not come with either of the first three parties? (Rec., p. 422-3.)

When recalled at a later date, the following further questions are put and answered (Rec., p. 394-5):

Int. The other day in testifying you were not quite sure in regard to Jesse N. Carroll, but thought he came with the third party. What do you now remember as to that?—A. My recollection is that he did come with the third party, from circumstances.

Int. Is there any other person that you now remember as arriving differently from what you then stated?—A. I can't say; I think I then stated that I was not positive which trip Samuel Moppin came out in; I recollect now that he came in the third party.

Int. When did the fourth party arrive?—A. The night of the 1st or the morning of the 2d of July, 1880.

Int. When did Joseph James arrive?—A. I brought a party in September and one in October, 1880, and my impression is he came in September; either that or October, 1880.

Int. When did John W. Jackson arrive?—A. He came in the July party, 1880.

Int. How old was he in 1880?—A. I can't say.

As I do not feel convinced by this evidence either that the witness remembered what he testified to, or that it was possible for him to remember what he assumes to do, or that this furnishes adequate proof of the claims set up by contestant, as against the presumptions and the counter evidence already adverted to, a minute statement of reasons may be proper, in the shape of statement and argument.

In the first place generally it is to be observed and noted:

1. The interrogator took specific names from the poll-lists of two voting precincts, and gave the name as there found to the witness in each question. The mode adopted was suggestive and leading, and detracts very much from the value of the evidence. The votes cast by colored men in one township was 43, and in the other about 60, making in round numbers about 100. The notice of contest embraced all the colored men by name found on the poll-list in each township, as a blanket charge of illegality applied to all alike. Now, if the interrogator had handed the witness a list of those names, and asked him and had him state whether he could remember colored persons who came from Virginia and who bore those names, or any of them, and, if so, specify what ones and when or in what lots they came, and say how he was able to remember them, giving his particular reasons therefor, if he had any; or if he had been asked the more general question embracing all the men contained in the six several lots, and he had answered with any reliable certainty, and made it appear reasonable that he could remember, and did remember, both the names and the persons to whom they applied, his evidence would have been of more worth. Instead of that course of proceeding the contestant picked out the names he wanted to use, gave each one specifically to the witness in a single question, without asking generally if he knew him and remembered anything, and, if anything, what, about him. He asked him substantially only when he came to Iowa. Under the facts and circumstances appearing, and hereinafter adverted to, no one can be satisfied, from the way in which the questions are put and answered, that the witness knew the persons referred to, or had much, if any, acquaintance with them, or could apply the names to particular persons clearly called to mind, or had any reason why he could single out a few persons from the hundreds who voted, or from the several hundreds—say 300—colored men whom he had brought from Virginia in six separate and distinct lots, with an interval of a month or thereabouts between them, and that about two years before the time when he testified by an un-

aided memory. For aught that appears, he was answering after being "coached," as the lawyers say, and upon information and belief formed from sources other than from memory and personal knowledge. Not being able to get the roster for "*association*" he may have found otherwise a convenient memory for the contestant, with ill-feeling caused by the non-production of the roster. Under such circumstances an unscrupulous or angered witness might be likely to take his dates and names, &c., from others, if they were not in his memory.

2. Save in two instances (as to Mr. Hues and Spencer James) it does not appear that the witness had any particular personal acquaintance with the men named.

3. It does not appear as to any of them that he had any reason why he could single them out of the whole number of 300 who came, or of the 100 who voted, and say in what lot they came. It is or would be a very suspicious fact if he could not do the same as to all or each lot and appeared to be able to do it only as to the very persons needed to answer contestant's claim. That alone would serve of itself to so depreciate the value of his evidence as to destroy the effect of the same.

4. The fact that he does state why he remembers Mr. Hues and Spencer James leaves it to be reasonably assumed or presumed that he had no particular or special acquaintance with the others.

5. It is to be observed that in few instances alone does he state the date or lot directly or absolutely even in form or appearance. And even in these, no one can tell whether he remembers the fact as a matter of memory, or has satisfied his own mind from hearsay or information obtained by inquiry of the contestant or others. In some instances he states by impression, and rather faintly. In other instances he does it argumentatively, or by using the argument of exclusion, or a negative process, and forming a deduction and then stating that as his conclusion or as a fact. Even when he is recalled subsequently, and has had time to refresh his memory, and has attempted to do so in other matters at least, he states as to Jesse Carroll with more positiveness, but gives no reason for it, and presumably had none, as he does not, and is not asked to, state it. I can conceive of none, and if allowed to conjecture, or disposed to assign one which is derogatory to the witness, I should say that it was because it had occurred or been suggested to him that, as he had left the testimony before as to Jesse Carroll it did not come up to what was needed to answer contestant's purpose, and it was therefore made more direct and positive in answer.

I am myself impressed, and I think any one disposed to scrutinize the evidence and get a good reason for his conclusion must likewise be impressed, with the suggestion that the witness undertook to do, and is claimed to have done, an impossibility, except perhaps in two individual instances which form exceptions, because of a more intimate acquaintance and for special reasons given. It is too much for any one to assume, without evidence to that effect, that there were particular reasons as to the other persons comprehended in the answers given, especially when they are almost exclusively the particular men needed for contestant's purpose. In this view, and in order to show this impossibility, one has only to form a background and basis of facts not disputed in front of or on which the witness stood when he thus testified. I state or restate some of the prominent ones. He had left the company long before he testified, that having been given up, and had gone into other business. A year and a half, more or less, had elapsed since the dates in question. He had no access to the books and papers of the company, had no lists, books, memoranda, or other papers, or

given facts, by which to fix the dates or the particular lots in which the men came. The crowds of negroes were people taken and gathered up in different sections of Virginia, were taken to Iowa, to the number of 400 or 500, and in crowds, 6 in number, of from 65 to 80 each, distributed through seven months, at intervals of about a month or more. The witness, a white person, does not appear to have had, save in cases of limited exceptions, any more acquaintance with them than such as would arise from the general facts named. He had little to do with them at the mines after they arrived except to locate and organize them for work there, hand in to the officers of the company which employed him the lists of the persons brought, with an account of his expenditures and expenses. It is true that while at the mines, in the intervals between the trips, he may have seen more or less of them; but as they were at work in the mines, and he did not attend to keeping pay-rolls or their accounts, or paying them off, his familiarity was not much or great. Some of them had several different names by which they went, and they were largely called by nicknames. Very rarely probably was the full name sounded in the witness's ears. If the witness ever wrote them, it don't appear to have been done only when he made out the lists in Virginia before, and when he took the persons to Iowa with one ticket or pass. He had no occasion to memorize the names, in any considerable number of instances at least, and would not be as likely to do so if he wrote them down at first and relied on the lists.

I submit for the consideration of the House whether it is in the power of human memory to retain and be able to give accurately what the witness has claimed to be able to state. He could do it perhaps in special cases and for specific reasons which he could give. I would not believe *any* man if he said he could do it until I had put him to the severest test and found it to be so, and then I would set him down as an anomaly, a prodigy, and should want to know what his system was so it could be put into a treatise on mnemonics.

But it is proved beyond doubt that the witness here is no such wonder or prodigy, but quite the reverse. The cross-examiner appreciated this difficulty and put the witness to the test sufficiently to accomplish the purpose. It was proved beyond doubt that the "May crowd" (of May 15) had at best not more than ten men in it, the rest being women and children, and he would be able to state the names of the men in this lot, if any one, we should suppose. But he fails utterly, and shows what I have already urged in another connection, *that he required that the interrogator should give the name first in the question.*

Let us see how he bore the test. I quote from the record of his evidence:

1st. Then you can't remember now how many men came with you on that third lot, or where they came from?—A. I can't remember the number of men, but I now call to mind now some who did come, and that they came from Staunton, and I now recollect further that I had quite a number of women and some children, and I recollect further that some of them came from west of Staunton. I can call some of the families and some of the men without any memorandum.

Int. There were only about ten men in the May party, were there?—A. My recollection is that there was a smaller number of men on that occasion than either of the previous trips or subsequent one that year. I believe there were less than twenty.

Int. Isn't your memory good enough to enable you to get nearer the exact facts than that?—A. My answer is that I am giving the facts to the best of my memory, as I have frequently stated. I haven't any memoranda to aid my memory whatever.

The third lot is the "May crowd," as witness says. This matter is returned to again (Rec., p. 398), and he finally confesses that he could not tell the names from memory. I quote:

Int. *Did you bring a single Charlottesville man with you in the May trip?*—A. I can't call to mind whether I did or not, but if I had the roster, or any other list of the names of the parties, I could.

Int. *Don't you know, outside of the roster, what men you brought in the May crowd?*—A. If I heard the list of names called I could tell perhaps. The roster was the only book of the Consolidation Coal Company that I ever remembered to have handled, except the miners' book.

Now let us turn to another test of the witness's memory. What I shall next quote in considerable detail shows not only a very defective memory, but a very loose and reckless course of swearing at the outset, and all through a very weak power of association, as he terms it, not to say an utter falsity of statement. It is to be observed that when first called he undertook to fix the dates of going and coming for and with the first four lots in the line of contestant's assumption or desire. He was then with an unaided memory, and proceeds to state that he started for the second lot about the first of April; that it took him about three weeks to gather up the company (Rec., p. 322); that he arrived in Iowa *some time after the middle of April with the second lot; that he went for the third lot after a shorter interval than any trip before or after, less than two weeks from the time of his arrival with the second lot; that he got back to Iowa in the month of May, remembers that; that he could not have gathered up the company short of three weeks; usually made it a point to strike courts at Staunton and Charlottesville; that the court sat at Staunton the 4th Monday of May, and fixes that as the time when he was at Staunton getting the third lot.* (Rec., p. 322, 323.)

Subsequently it turns out, and he swears on the strength of two letters written by him to his wife, that he arrived with second lot April 4, and that he *arrived* with the third lot May 15. He fixes this latter fact by the date of a draft also, and in other ways hereafter to be discussed. Now, it appears by this that his memory, not only as to dates but as to distinct facts, was utterly unreliable. It is proved by Dr. Withersill, and conceded in contestant's brief, that the witness started from Iowa May 4 or 5, while witness cannot exactly tell, but says it was about May 1. If so, and he returned May 15, and it took him three weeks to gather a crowd of some sixty negroes, women and children, and four or five days to travel each way, it is difficult to see how he could get back in ten days from the time when he started from Iowa, and yet he swears to each of the elements which lead to that result, and fixes the day of arrival in Iowa as May 15.

The cross-examiner put him to the test, and showed up his recklessness of statement and his grave errors and mistakes of memory most effectually. *He did not meet a single term of court in Charlottesville or Staunton when he went for either of the first three lots, unless the third arrived May 1, 1880.* I quote:

Int. *Have you any recollection that you certainly hit either court in either April or May. And, if so, state particularly which court and in which month?*—A. My impression is, and has always been, that I did not miss both courts at either trip; I have no distinct recollection of any one.

Int. *If you have no distinct recollection of either hitting or missing either of those courts in April or May, why did you voluntarily refer to the courts the other day, when Mr. Cook was asking you questions, as being something from which you could fix date and times?*—A. For the reason that I have explained a half dozen times, that I always aimed to hit one or the other, or both courts, with a view of meeting more people on that day than any other day in the month; that I usually aimed in planning my trips to meet either one of those courts or both.

Int. *But how would that fact help your memory if you don't know you were at either court?*—A. It is a habit and custom in the country that I bring these people from for the colored men living in the country to come to courts of their counties when they are hunting employment, and it was always my purpose in starting from here to Virginia to strike one or the other of those courts, and I have no recollection of having missed both courts in any trip; my impression is that I did not miss both courts.

on either trip; it is possible that I may be mistaken as to it being the third Monday, court day in Staunton; it may be on the fourth Monday; if permitted to go and hunt up the evidence, I think that I can establish to a certainty that I never did miss both courts on either trip.

Int. Do you feel quite positive that you did not?—A. That is my impression, sir.

Int. Is your recollection pretty clear on that point?—A. I gave it as my impression.

Int. Then tell definitely which court you hit in April.—A. I can't tell positively.

Int. What day in March did you start back for the second lot?—A. I can't tell you, sir.

Int. Give the date as nearly as you can.—A. I recollect that I was at Muchachinock ten days or two weeks before I started back for the second lot; I go by circumstances more than anything else; I have no data to go by.

Int. What day of the week did you start back, and was it not on Monday, the 22d day of March, that you started back?—A. I can't state positively the date, but think probably it was, as I usually started early in the week, in order to get home before Sunday.

Int. At which court were you when you went back for the second lot?—A. I can't state positively.

Int. Give your best impression.—A. I am not positive whether on that trip I struck either of the courts. I aimed to do it, and usually tried to strike one or the other, and always preferred to strike the Charlottesville court; I have a letter in my hand post-marked March 15, 1880, dated at Muchachinock, written on March the 14th, 1880.

Int. What time did you start back for the fourth lot?—A. I can't say positively; I can tell you the circumstances by which I can fix the date of my return to Muchachinock; we got there the day before they celebrated the 4th of July; we got there on the 2d.

Int. Give the date when you left for the fourth lot, as nearly as you can.—A. It was after the first of June, and very early in June; I found the people harvesting in the Shenandoah Valley, and I recollect further that it was an unusually early harvest.

Int. When did you start back for the third lot; before or after the first of May?—A. I can't be positive as to time; I remember one thing, of having eaten strawberries at Cincinnati, Ohio.

Int. Give your best opinion as to when you started for the third lot?—A. It was the latter part of April or the first of May, 1880. I can't be positive as to exact date unless I have something to locate by.

Int. Then you did not aim to reach either the Staunton or Charlottesville court in April?—A. My recollection is general about that; I aimed to strike either one of those courts or both, with a view to meeting more men from their homes.

Int. You did not strike either court in May, did you?—A. My recollection is general about that; I always aimed to strike either one or the other or both. If I have time to examine letters I have at home I can probably tell better.

Int. Are you able to say whether you did or did not start as early as the 17th day of March?—A. I can't call to mind any circumstance to fix the date at all, except I don't think from what I did down there at Muchachinock that I did start that early.

Int. Then, according to that, you did not hit the March Staunton court?—A. I probably did not.

Int. Then you hit none of the courts in March or April, and not more than one, if any, in May?—A. Well, I think from the dates that have been given me to-night that is probably the fact.

Int. Then those courts do not enable you to fix any dates at all?—A. Not positively.

Int. Then you are mistaken, are you not, when you said you thought you were at the Staunton court in May?—A. I am not positive that I am mistaken; it is probable that I was.

Int. You were mistaken, were you not, when you said you hit the Staunton court in April?—A. My answer is on record; twice before I answered that I thought I was, but after examining dates it could not have been possible to have been here.

Int. You are mistaken in saying that you thought you were at the Charlottesville court, are you not?—A. Yes, sir; I could not have been there on the 4th.

Int. You are mistaken in saying that you thought you were at the Staunton court in March, are you not?—A. I don't know that I am; I had no date to go by; I am not positive that I was there at all, as I have answered before. I had an impression that I never missed both courts any trip.

Int. You are mistaken in saying that the shortest interval was between the second and third parties instead of the first and second?—A. Yes, sir; I made that statement in beginning my testimony this morning.

Int. You are mistaken in saying that you got here with the second lot after the middle of April?—A. Yes, sir; and I made that statement on my direct examination this afternoon. I have repeatedly said during my examination that I had to fix all the dates more from circumstances than anything else. With the exception of the

two letters I have had no memoranda or data to go by. I can tell, if you desire it, how I fixed the arrival of the first and fourth lots.

Int. You are mistaken, are you not, when you said you left Virginia with the third lot after the Staunton court?—A. Yes, sir; I corrected that in my direct examination this morning.

Int. Since it is evident that you have made so many mistakes in your testimony, is it quite likely that you have made other mistakes that have not been mentioned?—A. *It is quite possible, especially as to dates.*

Int. What ones of the colored men do you say sent back money by you or requested you to do errands for them when you went back for the third lot?—A. I can call to mind two, Nelson Woodford, from Charlottesville; Hilliard Scott, another. It is almost invariably the case that I had money and messages to take back to their friends, and to attend to little business matters for some of them.

Int. If you got here the 4th of April, then you must have missed the Charlottesville court, which was the first Monday in April?—A. Yes; then if I am mistaken about the date of holding court, then I must have struck the Staunton court in March.

Int. Then if you hit the Staunton court in April, you had to be there by either the 19th or 26th of that month, did you not?—A. My recollection is that I was not there at either of those dates; I have a letter here showing that I was at Muchachinock on the 26th of April. I could not have been there then.

Int. Then it is not true, is it, that you hit either court in the month of April?—A. From the dates before me in this calendar I did miss both courts, because I was here on the 4th and 26th, inclusive, yet I have no recollection of having missed both.

The witness leaves for several hours at this point, and on returning the examination proceeds:

Int. I believe you said you missed both of the April courts in Virginia?—A. Yes, sir; after the dates before me, I know it was impossible for me to be at either of them. The whole of my testimony-in-chief and cross-examination given the other day and to-day have been entirely without memoranda or data, except the two letters that I presented to-day; I didn't know the existence of them until after I had testified the other day.

Int. You were quite sure you hit one court or the other in April?—A. I was until confronted with the dates in April, in the letters and the almanac.

Int. You at first were quite sure that you had hit the Staunton court in May?—A. I was quite sure when I testified that I never missed hitting one or the other courts on either trip to Virginia. I also was quite sure that I hit one or the other court in May.

Int. Didn't you say that you thought you hit the Staunton court in May?—A. That's my recollection of my evidence.

Int. You didn't hit that court, did you?—A. No, sir.

Int. Did you hit the Charlottesville court in May?—A. My impression is that I did.

Int. Did you bring a single Charlottesville man with you in the May trip?—A. I can't call to mind whether I did or not, but if I had the roster, or any other list of the names of the parties, I could.

Int. Don't you know, outside of the roster, what men you brought in the May crowd?—A. If I heard the list of names called I could tell perhaps. The roster was the only book of the Consolidation Coal Company that I ever remembered to have handled, except the miners' book.

Again, as to the roster:

Int. Do you say that by examining the roster you could tell more about these men than otherwise?—A. I can.

Int. Examine the book now shown you and state whether that is the book mentioned by you in your testimony.—A. Yes, sir; I believe it is.

Int. Does that book show the date of the arrival of each man?—A. I don't see it here, sir.

Int. Does it enable you to testify with any greater certainty or more particularity than you could do without it?—A. Yes, sir; from association.

Int. What is it you cannot explain?—A. In the first place, on the index sheet the names do not appear as they arrived at Muchachinock; for instance, James Ash's name is the first on the list, and Hesekiah Adams', both of which came in the fourth party, and Charles Allen came in the second, and he is below them.

Int. Explain fully, as fully as you wish and can, when and how that roster enables you to testify to anything with more particularity or certainty than you can do or have done without it.—A. I am enabled by having the names before me to associate them one with another; that would make me identify them as to their arrival, as to the time they came and party they came in. To illustrate I will use a list of four or five names. I catch one that I can associate with the crowd, and then I can catch

the balance that came with him. Here I see the Rev. Charles Brookens came in the July party, and I know that James Osten and Hezzy Adams was in that party, and so on all the way through.

Int. You gave some other illustrations there, Charles Allen and some others.—A. I remember distinctly that Charles Adams came in the second party; Sophia Banks came in the second party; Frances Briggs came in the first party; she was the only woman in the party; Daniel Booker came in the first party and left before the second party came; Frank Bush came in the second party, and I brought his wife in the July party; Lee Bugher came in the first party, and left pretty soon; Isaac Brookens came in the first party, and had a severe spell of sickness and left in a short time.

He said he could fix dates and things by association, and states one instance in the case of the name of Sophia Banks. But contestant had seen demonstrated that he had no accurate power of association and dropped him, and neither he nor the witness proceed *with* the aid of the roster about which there had been so much clamor and hard accusations made against the contestee prior thereto. The contestee consented to waive the question of time. But contestant had the witness swear that he had had a bad sick-headache all the time during which he had been testifying, as though that could add any weight to his evidence.

It turned out that the one thing about which he was certain, to wit, that Sophia Banks came in the *second* party, was otherwise. Page Irwin and others show conclusively that she came in the July party. (Rec., p. 560 *et seq.*; Jones, p. 550.)

Contestant had had access to the papers of the company, and had taken away and kept the pay-rolls. He said he could not find the pay-roll for April, and that is not here. He produces only those for May and March, and up to what date they run does not appear. All subsequent to May contestant got, but he don't produce and put them in evidence. If we had June, it may have covered part or all of May.

Is it an answer to say that contestee failed to refute this evidence? It appears that endeavor had been made to get the witnesses, but they were not obtainable. The men at the mines had dispersed and gone. And contestee was engaged in discharging his duty as a member in term time, was known to be ill, and so great diligence could not be reasonably required of him as under other circumstances perhaps. He had a right to stand on his *prima facie* title until it was overthrown by competent and credible evidence. And this had not been done, in my judgment.

I now call to the attention of the House other elements by which the credibility of Major Shumate is impaired.

6. It appears that *Shumate advised men to vote who he knew were not legal voters.*

Isaac Downey testifies thus, viz:

Int. 5. What was the conversation you had upon that subject?—A. It was some time in October, sir, in the year 1880, while Major Shumate was there. I told him I had a notion to come to Iowa, but did not want to come until his return again, so that I could get in my vote for President. He then said that it did not make a damned bit of difference; that I could vote in two weeks after I arrived in the State. (Rec., 582.)

Minor Henderson testifies that on the day of the election—

He (Shumate) asked me if I was going to vote? I told him no, sir. He asked me why? I told him I had not been out here long enough to vote. He then told me I could go and vote here if I had only been here but one day. (Rec., 579.)

John Hawkins's testimony is this, viz:

He told me to go ahead and vote, that the people did not swear here like they did in Virginia, and I came pretty near going to vote. The wagon was so near full that I did not go at that time.

Int. 7. What did you say to him when he asked you to go and vote?—A. I told him

I did not like to do it; that I did not do it at home. *He said it made no difference here.* The wagons came back the second time; I took a second thought and would not go at all.

Int. 8. How long had you been in the State at the time of the election in November, 1880?—A. About a month, and cannot tell exactly how many days.

Int. 9. Did Shumate know that you had only been here about that long?—A. Of course he did, when he came with me. (Rec., 604.)

Attempt is made to palliate the effect of this by showing that he did not know the law. But this is hardly probable, as he had voted himself at prior elections and lived long in Iowa.

If he did not know, and attempted to induce a man to vote without first ascertaining, this proves a recklessness and wantonness not creditable to him. He was a Democrat, and it may be said that he would not be likely to urge votes which he might infer would be cast for the Republican candidates. It don't appear that the men named were Republicans. It is proved that some negroes were otherwise, and cheers were given among them for Hancock.

If colored men went from the mines to vote, Major Shumate was there, and he would be likely to know it. Although he did not himself go to the polls and see who voted, he saw who went, as the witness Hawkins speaks of him as if near the wagon in which the men were being carried to the polls. In the conversation which I will give soon, he assumes to know who voted, and clearly had an opportunity to see and know who went. The negro vote had been canvassed before the election. If he knew that persons were going to vote who had not the requisite residence, his duty was, in his relations to them, to warn them against it. As a Democrat he would have been likely to do it, in the interest of his party, and as a patriot he ought to have done it.

7. Shumate is impeached, and his present story contradicted by what he had previously solemnly declared when the matter was fresh in mind.

After the election was over and a contest threatened or begun—when inquired of about it, or when the subject was being mooted—he would or should have told the truth, if he said anything and was a man of veracity. What did he do and say? I take his own testimony and let that speak for him, without resorting to that given by others:

Int. Do you know W. A. Lindly?—A. I do, sir; cashier of the bank.

Int. Did you have a conversation with him about the month of April, 1881, at the Oskaloosa National Bank, and soon after you returned from Virginia in that month, in which you said to him in response to a question that you were acquainted with all of the colored men at the mines, and that those who voted were legal voters and had a right to vote, and that the charge that any of them had voted illegally was entirely unfounded, or words to that effect?—A. I had a conversation with Mr. Lindly with reference to the charge of illegal voting, to the effect that the charge of illegal voting was false, and from my information, not all voted that had a right to vote, and from my information that the charge was false, for I never knew how many men did vote, but with reference to several conversations I had I have invariably made the same statement, according to the best of my information.

Couple this with the fact that he knew when the wagon loads of colored men went to the polls, and had information otherwise on the subject, and the fact that he then knew and had in mind better than now who had come since May 15, what shall be said of him when he swears in effect that one-fifth of those who went from the mines to vote had no right to vote? What shall be said of his solemn statements to different parties after the election day, when the matter was fresh in his mind, when contrasted with his strained efforts of memory now to gainsay the truth of that statement? Why did he keep silent so long, when this contest had begun, and until contestant got hold of him in an emergency of his case and in a desperate attempt to get more evidence?

8. Besides and beyond all this, some 25 or 30 witnesses of more or less weight, white and colored, impeach his character for truth and veracity by swearing to his bad reputation in that regard. If this mode of impeachment stood alone, and everything else which appeared in evidence was above suspicion and reproach, I should not be disposed to say much about this proof of bad reputation. With what has already appeared in other matters stated, each element gives countenance and support to the other, and they must go together. Witness has sworn to what he evidently could not remember, as though he did recollect it, as an independent matter of absolute memory. Much of his evidence, while it cannot be said to be willfully corrupt from anything that appears, was given with an apparent recklessness of statement in several instances, and it is contradictory and conflicting in itself. He is contradicted on several points by other witnesses who seem credible, and the general impeachment lends some aid at least, in connection with that, to seriously impair, if not entirely to discredit, him as a witness. At any rate I respectfully submit whether this is not so.

He calls most of his witnesses to sustain his character from where he was least known, and few from where he had lived two years and was best known.

If any one hesitates to find absolutely that Major Shumate is mistaken, or is in error, or that he is successfully impeached, or even that he has falsified, he needs to go no further than to say that contestant's claim now being considered is *not proved* satisfactorily; that it may be true, as testified to by him, and it may not be, but it is not strong and certain enough in quantity or quality to overcome the contestee's *prima facie* right. Those who, on the other hand, give full force and credit to Major Shumate will not hesitate, probably, to charge the whole number of persons who voted and in question with not only voting illegally, but of corrupt perjury in swearing at the polls that they had resided in Iowa the requisite six months, and couple in the charge some eight more disinterested colored men who sustain them. Some may hesitate to discredit one white man who may be only in error by reason of imperfect recollection or innocent mistakes, and yet will not hesitate a moment to believe fourteen other men guilty of perjury on the strength of the testimony alone of that one white man, besides leaping the wall of strong presumption which the law has built for the protection of the seat of the contestee. For one I cannot go with them. Accordingly I reject the claim of contestant in regard to the seventeen votes constituting the second class, as classified by me.

VI.

As a summary and in partial review of the case I have to say, as my opinion: It may be treated as proved on a preponderance of evidence that there was a company of colored persons who arrived in Iowa May 15, 1880, and if established that there was no company taken by Major Shumate from Virginia to Iowa between April 4, 1880, and May 15, the evidence is satisfactory that the following persons arrived May 15, 1880, to wit: Jesse Carroll, Andrew Lewis, Henry Lewis, James Usher, Charles Garrison, James S. Martin, and if they are identified as the persons whose names appear on the poll list, their votes were illegal, and six votes should be deducted from the vote of the contestee; that a correspondent of names only is hardly a sufficient proof of identity. So that the claim of contestant as to what is termed the "May crowd," and in regard to which the evidence is very conflicting and troublesome, may

be allowed, entirely disregarding the evidence before alluded to, of some twelve witnesses, who swore positively to May 1, 1880, as the date of the arrival in May. I cannot and do not resist the conclusion that May 15, 1880, was the date of the arrival of *one* May crowd. As I have already said, nothing can reconcile the evidence of some twelve witnesses that there was an arrival of a company of colored persons on May 1st with the other proof if there was only one lot in May; but the assumption that there was another arrival between April 4, 1880, and May 15, will reconcile it. I will concede, however, for the sake of the argument, that six votes are proved to have been cast by persons who arrived May 15. The contestant is still bound to prove four more votes to get rid of the ten majority found in Div. I; and ten more, the balance found in favor of the contestee as a balance in the miscellaneous class. This must be got out of the uncorroborated evidence of Major Shumate, and taken from the list of those alleged to have come after May 15. No man, woman, or child, colored or white, and no documentary evidence, sustains the evidence of Major Shumate as to that class of voters. And the unsupported evidence of one man is used to overcome the presumptions of law and the oath of each voter at the polls. What impresses me against such a conclusion is that what Shumate testifies to as to these men was given entirely from memory, without any paper or document, or other fact to refer to in aid of the memory, and when he states no acquaintance with any of the persons named with the exception of two of them. It is apparent that the human mind ordinarily is unequal to the task of fixing such dates, and to locate these individuals in particular lots out of six different ones of from 60 to 80 each, especially under the circumstances which the witness gives. He does not pretend that he can do it with accuracy, and does not assume to do it. What he says is mainly by impression only, by process of reasoning, and oftentimes argumentatively or inferentially. He is asked to name the men who came in the "May crowd." He could not do it, although they were few in number. He said he could do it by association if he had the roster, and getting the roster he swears to one person with great positiveness, and this by association, and in this instance he was manifestly in error, as is shown by other evidence. He attempted to fix the date when the May crowd came by saying that he gathered the crowd at the May term of Staunton court, which sat the third Monday in May. He had afterwards to confess his error in this regard. A series of mistakes in matters of memory, involving important facts, appear as confessed by him. If confessed to be mistaken in things as to which he pretended to be most certain, what reliance can be put upon his memory in other vital matters where he don't pretend to be certain, or has nothing by which to aid his memory, and especially where the facts are such that no man of the usual capacity could be expected to know or remember with any accuracy a year and a half afterwards, and when there is no particular reason shown why he should remember facts and individuals in question? The memory must be such as to enable the witness to recognize and identify the persons, and have them correctly in mind when the names are simply mentioned to him by an interrogator, and that too where in many of the cases there were several persons by the same surname. It is not in the power of man to do it under the circumstances appearing. The witness clearly could not have proceeded, unaided, to give the names of any considerable number of some hundreds of colored men, such as he had taken in crowds to Iowa in 1880. He was asked to do it as to one, the smallest of all, and failed, confessing his inability. If any one is singled out and remembered, it must be by reason of some particular fact which can be stated. The witness

does not pretend to single out but two persons whom he personally knew and recollects for some special reason. Even then, and as to these two, he does not give any reason why he locates them in or outside of any particular lot which came to Iowa. One was as necessary as the other in order to make the proof satisfactory. No one can read the whole evidence of Major Shumate (p. 321 *et seq.* and 400 *et seq.*) without being thoroughly impressed with the weakness and inaccuracy of his memory when standing alone and unaided. He says finally that he cannot tell what is asked of him by memory, as he has no books, papers, or memoranda to aid his memory. He changes his prior testimony on essential facts when the documentary evidence is found. As to the colored persons coming, as is alleged, after May 15, he finds nothing whatever to aid his memory, and confesses that he cannot fix the dates by the roster when that is produced and shown him, although he had before stated that he could do so by that, and he does not do it, and the matter is then dropped. When he is recalled, after talking quite a while and using means to refresh his recollection, he finds only letters to refresh it by. He adds nothing by which he fixes the dates and lots at or in which persons came, and that matter is left as it stood in his prior examination, found on pages 322-323 of the record. When we add to this looseness of memory, and the proof of so many gross errors of memory and grave mistakes, the other facts which show his political bias to be in favor of contestant, if either one, and which tend to shake him as a credible witness generally, and he is otherwise so strongly impeached by other evidence, I am unable, in the discharge of my duty, to find as proved any illegal votes out of the lot alleged as coming after May 15. It is enough to say that the illegal votes are not proved, and that the legal presumption in that event must be allowed to stand, and will prevail.

Nothing remains then but to give the figures showing the result reached by me:

| | |
|---|----|
| Start with the ten majority for the contestee, as found at the end of Division I. | 10 |
| Add the balance found in favor of contestee under Division II..... | 10 |

| | |
|---|----|
| We have a majority of..... | 20 |
| Deduct six votes from the May crowd, which is in doubt and dispute, but conceded for the purpose of the argument..... | 6 |

| | |
|--|----|
| Balance..... | 14 |
| If the balance in the miscellaneous class (outside the colored men from the mines) is increased, as found by Mr. Thompson, to fourteen, as he seems to find, this balance is made to be..... | 18 |

Even if great liberality is exercised toward Major Shumate, and he is found to remember Mr. Hues and Spencer James in the second class for special reasons given so as to entitle his memory to credit thus far, and they are proved to have voted for contestee (as they are not), this does not affect the result materially in either aspect.

I find the contestee's net majority to be 14.

I recommend the passage of the following resolution:

Resolved, That M. E. Cutts is entitled to retain his seat as Representative from the sixth Iowa Congressional district to the Forty-seventh Congress.

Resolved, That John C. Cook is not entitled to the said seat.

ALEXANDER SMITH vs. E. W. ROBERTSON.**SIXTH CONGRESSIONAL DISTRICT OF LOUISIANA.**

This case was dismissed because of failure on the part of contestant to take testimony and prosecute his case according to law.

MARCH 4, 1882.—Mr. MILLER, from the Committee on Elections, submitted the following

R E P O R T :

The committee to whom was referred the above case have had the same under consideration, and beg leave to report:

That after hearing argument, and after a full examination of the papers, it was unanimously agreed by the subcommittee having the case in charge that the contestant had not prosecuted his case according to law; that he failed to take evidence to substantiate his charges of contest; and therefore recommend that the contest be dismissed; which the full committee, upon due consideration, concluded to recommend. The committee therefore report the following:

Resolved, That the contest of Alexander Smith *vs.* E. W. Robertson, in sixth Louisiana district, be dismissed without prejudice.

SAMUEL J. ANDERSON vs. THOMAS B. REED.**FIRST CONGRESSIONAL DISTRICT OF MAINE.**

Contestant charges that voters were bribed to vote for contestee; that persons were allowed to vote who had no right to, and some were refused the right to vote who were entitled to; and that there was intimidation which prevented the real expression of the voice of the people.

Held, as to the charge of bribery, that there is no suggestion or intimation made of any complicity in, or even knowledge of, the same on the part of contestee.

That as to case of illegal voters and rejection of legal votes, there is no proof of fraud or willful wrong, only that the selectmen erred in judgment, and something more than conflicting is required to reverse their decision.

The evidence does not substantiate the charge of intimidation.

The House adopted the report.

JULY 18, 1882.—Mr. G. C. HAZELTON, from the Committee on Elections, submitted the following

R E P O R T :

The Committee on Elections, to whom were referred the papers relating to the contested-election case in the first Congressional district of Maine, having had the same under consideration, submit the following report:

The testimony in this case shows from unquestioned facts that the contestee received 123 more votes than the contestant.

This plurality the contestant seeks to overthrow by three separate allegations:

First. That some voters were bribed to vote the Republican ticket.

Second. That certain voters were allowed to vote who had no right so to do, and certain voters were refused the right to vote who were really voters.

Third. That there was intimidation which prevented the expression of the real voice of the people of the district.

Taking these allegations in their order we find the facts to be as follows:

First. As to the charge of bribery, no suggestion or intimation is made of any complicity or even knowledge on the part of the sitting member.

Whoever was bribed voted for the member of Congress simply because his name was on the general ticket. The number of cases alleged by the contestant seem to be but seven, of which one is proved by the statements of the man bribed, which are not contradicted. The rest are in dispute and rest on rather vague evidence.

Second. As to the charge of admission and rejection of voters. In order to understand the bearing of the testimony it is necessary to understand the law of elections of the State of Maine. By section 25, chapter 4, of the revised statutes of that State, it is made an essential prerequisite to the right of voting that the voter's name shall be on the check list, which is the registry of the names of voters. These check lists are made up in different ways in municipalities of different sizes.

In cities the general law is that the aldermen shall be in session, open to all, for six days before the election, which takes place on Monday, to revise the lists which are made out for each ward by assistant assessors, who go from house to house.

After the assistant assessors have made their lists from the best information they can get, they post the names in alphabetical order in front of the ward-rooms and in other public places, so that the voter prior to the open sessions of the aldermen may scan the list and see if his name is on it. During the six days those whose names are omitted, or incorrectly on, appear, and the needful corrections are made.

The lists thus revised and corrected are sent to the different wards, and as the voter comes to the desk his name is checked, and he votes. If his name is not on the list he cannot vote. In towns having one thousand or more registered voters the selectmen sit for three days to correct the lists.

In towns of between five hundred and one thousand voters the board sits one or more days.

In towns of less than five hundred voters, the selectmen correct the list before the polls open and during the entire day. All these different sessions are open and public.

The contestant claims that a number of voters voted for Reed who had no right to, and another number who would have voted for Anderson were not allowed so to do. These numbers if added together he claims would overcome the 123 plurality.

It is to be observed in regard to all these cases that there are no allegations of fraud or willful wrong, only that the selectmen erred in judgment. It is an appeal from those who, especially in the towns, were perfectly conversant with the status of every voter to Congress, on evidence taken in depositions.

The nature of some of this evidence may be inferred from the following extracts from contestant's brief:

At Falmouth, it is both affirmed and denied that Dayen, Stone, and True, who voted for Reed, were non-residents or paupers, and that the votes refused to Anderson of Murray, Reynolds, and Black were lawful ones (pp. 131 to 133, and 206-7, 215-17, and 293-4). The officials to decide were partisans of Reed.

At Standish, McKenzie, a non-resident, voted for Reed. Cotton voted for Reed, and says he was not bribed (p. 291); though his father supposed it to be an admitted fact that he was (p. 150). Merrill, of Washington, voted for Reed at Brighton, where his residence is both denied and affirmed (pp. 160-1-2 and 315, 348, 364).

At Westhook, the evidence sharply conflicts as to the right of Hoegg and others to vote for Reed (pp. 117 and 249-50).

At Otisfield, Pike and McNeil voted for Reed. It is positively affirmed and denied that they were non-residents (pp. 51 and 330-3-5).

At Gorham, Ney, Rowe, and Shaw, non-residents, voted for Reed (p. 163). And Bacon and Hall's votes refused to Anderson (p. 162). An attempted explanation will be found on page 297. Ney's name was added on election day; and a witness says Hall admitted he was not a voter (p. 222).

These examples will be found on pages 10 and 11 of contestant's brief.

An examination of the testimony will show that every case is a disputed one which has been settled on testimony more or less conflicting by men who, as selectmen of the town, were thoroughly familiar with all the facts, and in the open town-meeting, in the presence of men who also knew all the facts. To overrule such decisions in the absence of any suggestion whatever of bad faith would need something more than conflicting evidence. There was another class of cases in Portland where it does appear that a small number of voters lost their rights because of a failure to look after their registry. But this is shown on both sides, and was evidently the result of carelessness on the part of the voter and such accidents as must occur in a registry of more than 7,000 votes.

It should be added that cases of similar proof were shown on the part of the contestee, both as to the class of omitted voters and as to the cases of bribery, but we have not deemed it necessary to particularize, because the contestant on the testimony does not make out his own case.

The contestant points out the fact that in Portland two to one of his supporters were put on the lists by the aldermen, which indicates that they were left off by the assistant assessors; and therefore, he says, the omission was intentional. But when the fact is borne in mind that in the wards of floating population, where most of these names are put on, the Democratic vote is more than two to one, the omission proves the very contrary, and is just what might have been expected.

Third. As to the chance of intimidation, the evidence falls far short of substantiating the charge. It consists mostly of hearsay and rumors, and does not disclose a single instance of violence or even threatened violence. A common report "that men would lose their job" if they did not vote as their superiors directed, and the testimony generally referred to in contestant's brief (pp. 4 and 5), hardly constitute such an overthrow of men's wills and determinations as can be taken notice of by the law.

Your committee therefore recommend the adoption of the following resolutions :

Resolved, That the contestant, Samuel J. Anderson, was not elected, and is not entitled to his seat in this Congress.

2. That Thomas B. Reed, the contestee, was elected, and is entitled to retain his seat in this Congress.

GEORGE M. BUCHANAN vs. VAN H. MANNING.**SECOND CONGRESSIONAL DISTRICT OF MISSISSIPPI.**

Contestant in his notice sets out thirteen grounds of contest. Contestee challenged the sufficiency of the allegations of said notice and insisted the same ought to be dismissed.

Held, That all the allegations in the notice of contest are insufficient.

[The committee, however, examine the case, preferring not to rest a decision upon the sufficiency of the pleadings, "for if the testimony taken in the case develops the fact that the sitting member was not elected, it would be our duty to so report, although the contestant might not be entitled to his seat, having failed to comply with the law with respect to the sufficiency of his notice."]

Held, That one precinct should be rejected because contestee's party friends fired a cannon in close proximity to the polls, and kept it up for quite a while; another precinct should be rejected because the ballot-box was stuffed; and others because of the exclusion of United States supervisors of election from the polls and the counting of the ballots.]

The House adopted the majority report.

JANUARY 29, 1883.—Mr. CALKINS, from the Committee on Elections, submitted the following

REPORT:

A majority of your committee, to whom was referred the above-entitled contested-election case of the second Congressional district of Mississippi, having had the same under consideration, beg leave to report:

There were three candidates voted for at the November election, 1880, in this district. The returned vote from the various counties comprising the district was as follows: Manning, 15,255; Buchanan, 9,996; Harris, 3,585.

The district is composed of Union, Tippah, Benton, Marshall, La Fayette, Yalobusha, Panola, De Soto, Tate, and Tallahatchie Counties.

This contest was begun by the contestant, George M. Buchanan, against the sitting member, Van H. Manning, and in his notice of contest he alleges the following grounds:

1st. That in a portion of the counties comprising said district such persons were not appointed, neither was such representation given to the different political parties in said counties, in the appointment of county commissioners of election, as was designed and required by law.

2d. That in a portion of the counties comprising said district, election districts were abolished and other election districts established, without complying with and in violation of law.

3d. That in a portion of the counties comprising said district the registration of voters was not conducted as required by law, thereby depriving a large number of persons (of lawful right) of the privilege of registering and voting.

4th. That at a large number of voting places in said district, in the appointment of inspectors of election, such persons were not appointed, nor was such representation given (in making said appointments) to the different political parties as was designed and required by law.

5th. That in several of the counties comprising said district a large number of persons lawfully entitled to register were refused registration, and that the registration

and transferring of voters was discontinued many days prior to the time contemplated by law, thereby depriving a large number of persons, lawfully entitled to register (or to transfer), from the right of registering, and transferring and voting; and that in a portion of said counties the registration books were for a time removed from the place designated by law for their keeping, thereby depriving a large number of persons (of lawful right) of the privilege of registering (or transferring) and voting.

6th. That at a large number of *voting places* in said district many lawful voters were not permitted to vote, their votes having been tendered and rejected by the inspectors of election; that such unlawful interference and hinderance was permitted and practiced (such as is specially forbidden by law) as to obstruct and confuse the voters in the act of voting, or to deceive and prevent a large number of voters from delivering their ballots at the proper voting places; that a large number of persons were permitted to vote for you who had no legal right to vote.

7th. That at many of the voting places United States supervisors of election were not permitted to exercise the duties of their office, being prevented therefrom by the unlawful interference of other officers of election, or from other sources, in violation of law, and to such an extent as to prevent their ascertaining the result of the election and from performing other duties required of them by law; that no separate lists of the names of voters were kept by the clerks of election, as was required by law; that the polls were not opened at the time required by law, were not kept open continuously from 9 a. m. till 6 p. m., as required by law, and that upon the closing of the polls the counting of the vote and making up of returns was not done at the voting places nor at the time required by law.

8th. That at many of the voting places ballots were received and counted that were not lawful ballots in form and print; that inspectors of election rejected and refused to count ballots that were lawful after the same had been lawfully deposited in the ballot-boxes; that inspectors of election (with knowledge of the fact at the time) permitted ballots to be voted that were not lawful ballots; that during the hours prescribed by law for voting voters were harassed and disturbed in such manner as to prevent their voting in a free, fair, untrammeled, and peaceable manner.

9th. That the names of a large number of legally registered voters were not placed upon the poll-books (by the officers whose duty it was to place said names on said books) used at many of the voting places, and that in consequence thereof said legally registered voters were not permitted to vote, their votes being refused by the inspectors of election, said inspectors giving as a reason for such refusal to receive such votes that the names of the parties applying to vote were not on the poll-books.

10th. That the entire vote polled and counted and returned at a part of said voting places was unlawfully rejected and thrown out (and not counted) by the county commissioners of election on making up their returns of the total vote of the county.

11th. That at a portion of the voting places the ballot-boxes were not opened in public when the polls closed, nor was the vote counted in public nor at the time required by law to be counted; that in making up the returns a large number of ballots were counted as having been cast for you, when in truth and in fact such ballots were cast for other persons, or were ballots placed in the boxes in a manner not authorized by law.

12th. That at many of the voting places a much larger number of votes were returned as having been polled than were actually polled at said voting places; that at many of the voting places the poll-books for said places unlawfully contained the names of a large number of voters, which voters had no right to a vote at such voting places, but resided in other election districts, and that the names of said voters also appeared on the poll-books of the voting places of election districts to which said voters of right belonged.

13th. That at many voting places the election was conducted in many respects in utter disregard of law and the rights of voters; that the registration books and the poll-books of a portion of the counties and election districts in said district were at divers and sundry times not in the custody and keeping of the proper lawfully constituted officers, but were on divers and sundry occasions in the care and possession of persons not lawfully entitled to such care and possession; that at a portion of the voting places lawful ballots that were cast for me were not counted for me, but were (unlawfully) counted as having been cast for you, and were so returned by the officers of election; that there were a greater number of legal voters of said district who voted (or who offered to register and vote), and who were unlawfully prevented therefrom, who desired me as their Representative in Congress than there were who desired you as their Representative in Congress from said district.

To this notice of contest the sitting member files exceptions and answer as follows, to wit:

To said notice I make the following answer, to wit:

First answer. 1st. Protesting against the truth of the allegations in said notice, I object and say that said notice is so insufficient and defective that I need not deny or

admit the allegation therefor, for the reasons, to wit, said notice does not specify particularly the grounds upon which you rely and gives no reasons for failing to do so.

2d. The allegations are only conclusions of law and general averment of wrong-doing in some undefined portions of the district, by unnamed election officials of precincts not specified, in unnamed counties, or by persons not named or described, and in places and by means not specified, and in violation of laws and the rights of others not designated.

3d. Your allegations are so vague and uncertain that I am not informed as to the persons or officials whom you accuse of crimes, nor where committed, nor do you aver that such wrongdoings were not instigated by you, or that they were known to or acquiesced in by me, or that the result of the election was changed by reason of the matter set forth.

Second answer. 1st. Without waiving any objection to the manifold and vital defects of said notice, but reserving all benefit and advantage thereof, I deny each and every ground of contest set forth in said notice, and deny each and every allegation therein contained, and aver that throughout said Congressional district a free and fair election was held in all respects, except that in the county of Marshall, and in other counties, at every precinct, divers colored voters who wished to vote for me for member of Congress were deterred and prevented from doing so by reason of the threats of personal violence and other means of intimidation used and employed by other colored people, the neighbors of such voters, the names of all of whom are unknown to me, being instigated thereto by those who advocated your election, whereby I received less votes by one thousand or more than I otherwise would and all such voters by means of such intimidation were induced, contrary to their wishes, not to vote at all or vote for you, and thereby the great majority of votes that I should have received more than you at said election was reduced to the number of about five thousand two hundred and fifty.

Third answer. I charge and aver that you have made the wholesale charges of all kinds of crime and irregularities contained in your said notice without specifications of persons or places, not because you had reason to believe that any one of them had been committed to your injury, but with the deliberate purpose to evade the limitation of the statute and to speculate upon any future discoveries of evidence, and so you have made unlawful, vexatious, and fraudulent use of the notice and process authorized by statute, and the same should be quashed and dismissed.

It will be noticed that the sufficiency of the contestant's allegations in his notice of contest were challenged by the contestee in the beginning, and have not been waived; on the contrary, the contestee has insisted that the allegations in the notice of contest were entirely insufficient, and that the same ought to be dismissed for that reason.

It becomes necessary, in the first place, to pass upon the sufficiency of the contestant's notice. The first specification relative to the representation of the different political parties on the board of county commissioners of election calls in question the acts of the governor of the State in his appointment of the commissioners of election.

The machinery of elections by the Mississippi code is placed in the hands of the governor. He appoints the county commissioners of election, who in turn appoint the precinct election officers. The precinct officers make return of the vote cast in the different precincts to the county board, who in turn make their report to the secretary of state.

By section — of the Mississippi election law the different political parties are to have representation on said board. It ought to be carried out in good faith, and the different political parties ought to be represented on the election board. It is a duty incumbent upon the executive to see that this provision of law is carried out. It has been found in many of the States of the Union that a provision in the election laws similar to this is a safeguard against frauds and ballot-box stuffing.

The second ground alleged by the contestant is that certain election districts were abolished and others established without complying with and in violation of the law.

This allegation is clearly insufficient, as being too vague and general. It would have been an easy matter to have named the precincts, and pointed out how the acts complained of tended to prevent a fair election.

The third allegation is that in a portion of the counties comprising the Congressional district the registration of voters was not conducted as required by law; that large numbers of them were deprived of the privilege of registration.

This allegation is likewise uncertain and vague, and wholly insufficient.

The fourth allegation is a repetition of the first, except that it applies to the precincts or voting places, and not to the counties, and need not be further noticed.

The allegation in the fifth ground of contest is that in several of the counties comprising the district persons entitled to register were refused registration; that the registration was discontinued prior to the time contemplated by law; and that in some of the counties the books were removed from the place designated by law during the registration; that in consequence thereof persons were deprived of the right to register.

This allegation is too general. The particular places and the acts complained of should have been specifically set out. The same may be said with reference to the sixth allegation in the notice of contest.

The eighth ground of contest challenges the form and print of the tickets, but it is not pointed out specifically in what the illegality consisted. And the ninth, tenth, eleventh, twelfth, and thirteenth grounds of contest are open to the same objections.

The seventh ground of contest alleges that at many of the voting places United States supervisors of election were not permitted to exercise the duties of their office, and were prevented therefrom by unlawful interference by the other officers of election (we presume State officers). This charge is general, and it does not specify any particular voting place in the district where these acts occurred; but, perhaps, if any such unlawful interference is shown to have existed at any of the voting places, the committee would be justified in considering the allegation amended so as to make it conform to the proof, unless it were shown that thereby an injustice because of the insufficiency had accrued to the contestee.

This disposes of each of the allegations of contest, and with the single exception stated, under the uniform rulings of this committee and the House, the notice of contest would be held clearly insufficient. See *Duffy vs. Mason*, Forty-sixth Congress, and cases there cited.

We prefer, however, not to rest our decision of this case upon the sufficiency of the pleadings, for if the testimony taken in the case develops the fact that the sitting member was not elected, it would be our duty to so report, although the contestant might not be entitled to his seat, having failed to comply with the law with respect to the sufficiency of his notice.

If it be shown that there was an unlawful interference with the United States supervisors of election whereby they were prevented from discharging duties which are committed to their hands by the law of Congress, it would undoubtedly be our duty to set aside the election at such precincts. The law of Congress in respect to Congressional elections must be obeyed by the people, and nothing will tend so much to bring this Government into disgrace as to allow its will to be nullified and its officers overawed and prevented from performing their duty. One of the most sacred duties which this House owes to the people is to see to it that its laws are enforced and obeyed. The supervisors of election are the eyes of this House. Through them it can scrutinize every general election. Fraud of all kinds can be detected, and ballot-box stuffing can be stamped out.

This Government is founded upon the will of the majority. A majority is one more than half. When this is ascertained it is just as binding as if maintained by a larger preponderating popular expression, and for the purpose of maintaining the right of the majority to rule the supervisors' law ought to be obeyed and enforced with scrupulous care. We now proceed to examine the supervisors of election appointed in this Congressional district.

DE SOTO COUNTY.

W. J. Butler was examined as a witness and testifies that he was a United States supervisor of elections for Lake Cormorant voting place, in said county. His testimony is found at pages 11 and 12 of the Record. We have examined his testimony and find no charge of fraud, intimidation, or ballot-box stuffing.

Charles Scott, one of the inspectors of that precinct, testifies that everything was peaceful and quiet on the day of election. (Page 13 of the Record.)

L. C. Clay, United States supervisor of Oak Grove precinct, De Soto County, testifies to but one fact which is material, and that is that there were seventeen colored men and one white man refused the right of voting because they were not registered. (See page 26 of the Record.)

Felix Davis, another supervisor of election, for Horne Lake precinct, De Soto County, testifies to but one material fact, which is that one James Brooks, a Democratic inspector, took the ballot-box, after the ballots were closed, away with him and had it three-quarters of an hour out of the sight of the supervisor, when it turned up at Mr. Holliday's residence, some distance from the balloting place, and after supper proceeded to count the ballots; that the tickets on top of the box when opened all seemed to be Democratic tickets. During the counting considerable confusion ensued in consequence of suspicious acts on the part of the Democratic inspectors, and while the box was open a good many bystanders gathered around it and prevented its being scrutinized by this officer. They then proceeded to count the tickets, five at a time; at the close of the counting it appeared that there were 205 Democratic tickets, 130 Republican, and no Greenback. Witness testifies that during the counting he saw two Greenback tickets, which were taken from the box by a Democratic inspector and again put back in the box, but were not counted. He also testifies that there were 35 or 36 persons who offered to vote and were refused because they were not registered, and that there were about 75 or 100 Republicans left the polling place without voting because of the tardiness with which the officers discharged their duty, and the vexatious manner in which the time was wasted in asking questions and the like. He also testifies that he was abused by one H. M. Douglass, one of the officers of election, for being a Radical, and threats were made against him. That there were four or five men continually around the box during the count; that they were swearing and exhibited their pistols in a threatening manner. (See pages 31 and 32 of the Record.)

Silas Turner, one of the inspectors, in a measure corroborates the testimony of Mr. Davis. (See page 33 of the Record.)

C. M. Haynie, supervisor for Olive Branch precinct, De Soto County, testifies that 62 Republican voters were refused the right to vote because they were not registered, and that three Democrats and three Greenbackers were likewise denied the right to vote for the same reason at that precinct. (See Record, page 34.)

J. S. B. Boone, United States supervisor at Depot box, testifies that there were 30 voters at that precinct deprived of the right of voting because they were not registered. (See Record, page 36.)

E. A. Albritton, United States supervisor at Stewart's voting place, De Soto County, testifies that there were ten who were refused the right to vote because they were not registered, two of whom were Democrats, the others Republicans. (See Record, page 39.)

T. J. East, United States supervisor at Love's Station precinct, De Soto County, testifies that there were 15 persons refused the right to vote at that precinct because of non-registration; about three-fourths were colored, one-fourth white; that the ballot-box was taken at dinner time out of his sight to Mr. Love's house, 250 yards away from the voting place. (See Record, page 40.)

B. F. Bailey, United States supervisor for Louisburg precinct, De Soto County, testifies that the board adjourned at noon for an hour, and about an hour after, the polls closed. He objected to the adjournment, but they overruled him; that there were 12 persons refused the right to vote because they were not registered; that he is a Greenbacker in politics. (See Record, page 42.)

LA FAYETTE COUNTY.

C. E. Porter, United States supervisor at Abbeville precinct, testifies that 36 persons were refused the right to vote; they were all Republicans. (See Record, page 100.)

B. P. Scruggs testifies that he was United States deputy marshal on the 2d of November, 1880; that he lives in Oxford, State of Mississippi; that he was present at the election held there on that day; that within twenty steps from the entrance of the court-house, where the voting was being carried on, Mr. Keyes, a prominent Democrat of that place, and a member of the board of aldermen, was in charge of a cannon which was being fired, and that the witness protested against the firing of it; that he was told by Mr. Keyes that he had orders to fire it; that it was none of his business who gave him such orders; that they continued to fire the cannon until late in the afternoon; that the cannon was a regular six-pound field-piece. Witness also testifies that the Republicans were prevented from celebrating the victory gained by them because they were told by two prominent Democrats, Mr. Crawford and Mr. Skipwith, in the presence of Mr. Baker, chairman of the Democratic county central committee, that "they might have the right to do so, but they did not have the might," and to prevent a bloody collision, they abandoned it. (See Record, pages 51, 52, 53, 54, 55.)

MARSHALL COUNTY.

Robert Cunningham, supervisor of election for Chulahoma precinct, testifies that the inspectors of election refused to let him act as United States supervisor at that poll, and excluded him from the box. (See Record, pages 80 to 91, inclusive.)

John S. Benton testifies that he was acting United States supervisor of election at Holly Springs box; that he canvassed and kept a complete list of the voters as they voted, and that it did not agree within 50 with the list kept by the clerks of election, his count giving to Buchanan 119 majority, while the count of the clerk of election gave to Buchanan but 69 majority. (See Record, pages 75-79.)

Mr. E. J. Wilkerson testifies that he was United States supervisor

of election at East Holly Springs box ; that about 6 o'clock he stepped out of the hall for a moment where the voting was being done, and when he returned he found that 10 or 15 ballots had been added to his list that he was keeping by some one ; that there were 60 more ballots counted out of the box than there were persons on his tally-list ; that the door was locked and no one was permitted to be present during the count, and he was not permitted to be in the room ; that there were about 30 persons refused the right to vote because they were not registered ; that he did not see anything wrong during the voting, and is not able to account for the discrepancy ; that he watched the election as close as a hawk ever watched a chicken. (See Record, pages 91 to 93.)

Benjamin J. Jameson was United States supervisor of election at Wall Hill precinct. He testifies that there were 27 voters refused the right to vote because they were not registered. (See Record, pages 94-95.)

Charles B. Hardy, United States supervisor of election at Byhalia precinct, testifies that there were 29 persons refused the right to vote, 27 of whom were colored persons ; were refused for the reason that their names were not on the poll-book. He knew personally 23 of them ; they were Republicans. He testifies further that one Mr. Flow, who was a Democratic inspector, was guilty of stuffing the ballot-box by refusing to put a ballot into the box offered by one man, taking one out of his pocket and substituting it for it, and in various other ways tampering with the ballots. (See his testimony on pages 94 to 99, inclusive.)

Thomas Mull, who was United States supervisor of election at Mount Pleasant precinct, Marshall County, testifies that there were 17 persons who offered to vote whose votes were refused—14 blacks and 3 whites. (See Record, page 109.)

Thomas F. Briggs, United States supervisor of election at Early Grove precinct, testifies that there were 7 who offered to vote and were refused because their names could not be found on the poll-book ; they were colored men and Republicans who claimed to have registered. He is a Greenbacker in politics. (See Record, page 111.)

J. A. Austin, United States supervisor of election at Lane's Hill precinct, Marshall County, testifies that there were 12 persons refused the right to vote ; that they were all black but two. Mr. Austin was a Greenbacker. (See Record, page 126.)

PANOLA COUNTY.

John Fowler, United States Supervisor of election at Benson's Mill, testifies that the election was fairly held. (See Record, page 139.)

W. W. Perkins, United States supervisor of election at Batesville precinct, testifies that the voting was fair, free, and undisturbed ; that the counting was fair and correct. (See Record, page 140.)

D. F. Floyd, United States supervisor of election at Pleasant Grove precinct, testifies that the election was fairly held. (See Record, page 145.)

P. Lanier, United States supervisor of election at Pleasant Mount precinct, Panola County, testifies that the election was conducted fairly. (See Record, page 151.)

J. A. Small, United States supervisor of election at Sardis precinct, Panola County, testifies that there were 13 persons who were refused

the right to vote on account of their not having registered. These were Republicans. (See Record, page 157.)

W. A. Jones, United States supervisor of elections at Como precinct, Panola County, testifies that there were 23 refused the right to vote because their names were not registered. Most of these said they were Republicans. (See Record, page 158.)

P. H. Lanier, United States supervisor of elections at Pleasant Mount precinct, Panola County, testifies that there were 51 Republican tickets, 17 Democratic tickets, and two Greenback tickets thrown out on the ground that they were defaced so that they could be distinguished from the others. Some of them were torn on the end, some on the side; some were blotted; some had little white specks on them, some little black specks. They were put into a small box and nailed up, and put into a ballot-box; the ballot-box was sealed, and both boxes sent to the court-house. (See Record, page 170.)

G. P. Carrington, United States supervisor of elections at Senetobia precinct, testifies that the election was fairly conducted. (See Record, page 176.)

TATE COUNTY.

R. P. Powell, United States supervisor of elections at Cold Water precinct, testifies that there were about 21 persons who were refused the right to vote because their names did not appear on the poll-book. About 16 of them were Republicans, and he thinks 2 were Greenbackers. (See Record, page 177.)

W. C. Briggs, United States supervisor of elections at Looxahoma precinct, Tate County, testifies that the election was fairly conducted. (See Record, page 179.)

TALLAHATCHIE COUNTY.

R. J. Littlewort, United States supervisor of elections at New Hope precinct, testifies that the election was fairly conducted. (See Record, pages 194-195.)

We have given an epitome of the testimony of the United States supervisors of elections. These men were appointed at the request of the prominent Republicans and Greenbackers of the district. It is fair to presume that all of the active frauds committed in the district would come under their notice, and that they would be able in their testimony to expose all crimes committed. The labor imposed upon the committee may have caused it to overlook a few of the other active frauds complained of; but it is believed that the foregoing summary embraces all that is important to be noticed. It is evident from the testimony that some of the precincts before alluded to must be thrown out. Those that we decide to throw out will be found at another place in this report.

CONSPIRACY.

It has been strenuously contended that there is some evidence uncontradicted and which tends to establish a conspiracy among the Democrats of the district, which resulted in the returning of the vote as heretofore given for Manning, and the suppression of the true vote given for the contestant and Mr. Harris, the Greenback candidate. This is founded upon the fact that the colored vote in the district exceeded

the white vote, and that it was solidly Republican, and that it was cast, or ought to have been cast, for Mr. Buchanan; that the white vote was divided between the sitting member and the Greenback candidate, Mr. Harris. To establish this, census tables have been resorted to, and other evidence has been introduced tending to show that there was a general turnout of Republicans at the election, while there was much indifference on the part of Democratic voters.

The case of Spencer vs. Morey, decided in Forty-fourth Congress, Miscellaneous Cases, Vol. V, p. 438, adverted to by contestant in his brief, cannot be regarded by us as an authority in this or any other case. So far as we have been able to study it, it stands alone in the line of contested-election cases. We do not believe that proof of one corrupted vote going into a ballot-box is like "a drop of poison in a bowl of water, which contaminates the whole of it, and cannot be separated from that which remains pure."

The duty of the House is to separate the honest from the dishonest vote; to purge all ballot-boxes of illegal votes; to administer a rebuke to the voters of any precinct who permit the voice of the people to be stifled or suppressed; and to enable the House to do this a contestant should produce testimony of specific acts in order to show the wrong which he complains of. It cannot be done by general, vague, and uncertain allegations and charges. There is some proof introduced to establish these various points, but it is very general, and consists largely of the opinion of witnesses, and is not of such a character that the committee feel justified in finding that a general conspiracy against the ballot-box was practiced. It seems to your committee that if any such practice prevailed the United States supervisors appointed for the purpose of preventing such frauds could and would have given information whereby they could have been specifically proven.

Your committee have not hesitated to recommend to the House the throwing out of all the boxes where frauds, intimidation, or ballot-box stuffing have been proven, but it would be unsafe to assume from the testimony in this case that other frauds had been committed by the election officers not specifically shown or proven in any tangible or definite manner.

ILLITERATE ELECTION OFFICERS.

There is no doubt in our minds, from the evidence in this case, that many of the Republican precinct inspectors were appointed as such because they could neither read nor write. This is, in our judgment, a clear abuse of the law, and without the supervisors' law, which enables the opposing party to have men of their own selection to guard the polls as supervisors, we would be strongly inclined to apply a corrective for this manifest abuse of power.

With tickets exactly similar in all respects, or as nearly so as they can be printed, and on the same kind of paper, it would not be a hard task for election officers, if they were so disposed, to cheat an illiterate man, who could neither read nor write, both in the vote and in the count. All good people ought to disown and cry down evil practices of this kind. We indulge the hope that it will not be repeated in the future.

REGISTRATION LAW.

It appears in the evidence that very many electors in the various

counties of this district were deprived of the right of voting because they were not registered. The registry law of Mississippi provides the manner in which registration shall be made. An unlawful refusal on the part of the registration officers to register a qualified elector is a good ground for contest; but, in order to make it available, the proof should clearly show the name of the elector who offered to register; that he was a duly qualified voter, and the reason why the officer refused to register him, and, under the statutes of the United States, if he offered to perform all that was necessary to be done by him to register, and was refused, and afterwards presented himself at the proper voting place and offered to vote and again offered to perform everything required of him under the law, and his vote was still refused, it would be the duty of the House to see to it that he is not deprived of his right to participate in the choice of his officers.

Unfortunately in this case the proof falls far short of that which is required to enable the House to apply the proper remedy. That there were many instances in which the officers of the registration arbitrarily refused to do their duty is apparent. That many electors were deprived of their right to vote in consequence of this action is also apparent; but in going through the testimony in this case, the number thus refused registration, and refused the right to vote, if added to contestant's vote, would not elect him. Neither is it shown sufficiently for whom the non-registered voters would have voted had they been allowed that right.

CHANGE OF POLLING PLACES.

There is some evidence tending to establish the fact that many of the voting places were changed just prior to the election, and that much confusion was thereby caused among the voters. Many of them were not aware of the change, and in some instances they did not know where the new polling places were established. Just how far this affected the result of the election we are unable to tell from the evidence. We can, however, readily imagine how a resort to changing the polling places just before an election in a county would cause such confusion and unfairness as would defeat the popular expression of the will of the people through the ballot-box. The evidence in this case fails to establish the existence of such a state of affairs that we feel justified in interfering with the election for this cause.

REJECTED POLLS.

De Soto County.

| | Manning. | Buchanan. |
|-----------------------------|----------|-----------|
| Horn Lake precinct..... | 205 | 130 |
| Pleasant Hill precinct..... | 169 | 75 |
| Oak Grove precinct..... | 131 | 98 |

Marshall County.

| | | |
|-----------------------------------|-----|-----|
| Chulahoma precinct..... | 241 | 271 |
| East Holly Springs precinct | 292 | 220 |
| Byhalia precinct..... | 218 | 289 |

La Fayette County.

| | | |
|--|-------|-------|
| North Oxford precinct { Box No. 1..... | 403 | 223 |
| Box No. 2..... | 335 | 149 |
| | 1,994 | 1,455 |

The above precincts are rejected because of specific acts of fraud, violence, and intimidation having been proven.

At North Oxford precinct the contestee's party friends, on the day of election, fired a cannon in close proximity to the polls, and kept it up at intervals for quite a while. At Byhalia precinct the ballot-box was stuffed. At the other precinct there were irregularities of various kinds, chief among which was the exclusion of the United States supervisor from the polls and the counting of the votes.

DONNELLY-WASHBURN CASE.

We are not willing to go as far in this case as the majority of the committee did in the Forty-sixth Congress in the case of Donnelly vs. Washburn. It was there held—

The very fact that in these seven precincts Mr. Donnelly had been deprived by the city council of Minneapolis of all representation among the officers conducting the election is, in itself, a very strong proof of conspiracy and fraud.

We may remark that there is abundance of testimony in this case showing that nearly one-half of the polls in some of the counties were under the exclusive control of the party friends of the contestee; and it is stoutly maintained by the contestant that the refusal to register qualified Republican voters, and that the appointment of incompetent Republican election precinct officers at other polling places, and various other acts and omissions on the part of the partisan friends of the contestee, taken in connection with the fact that at many of the precincts only Democrats were appointed election officers, afford a strong reason why the rule laid down in the Washburn-Donnelly case should apply in this.

The appointment of managers of election, in fairness and common decency, should be made from opposite political parties. A refusal to do so in the face of a statute directing it to be done may in some instances be evidence of fraud, and it might form an important link in the chain of circumstances tending to establish a conspiracy.

We are not satisfied that the evidence in this case establishes such a conspiracy.

A word of explanation. When the Committee on Elections decided this case in committee there were several members absent, as the record of the committee will show. When the report was signed a majority of the committee agreed to the minority report.

We therefore recommend the adoption of the following resolution :
Resolved, That the contestant have leave to withdraw his papers without prejudice.

We concur in the conclusion reached by this report.

W. H. CALKINS.
GEO. C. HAZELTON.
JNO. T. WAIT.
S. H. MILLER.
F. E. BELTZHOOVER.
G. ATHERTON.
S. W. MOULTON.
L. II. DAVIS.

BUCHANAN *vs.* MANNING.

Mr. W. G. THOMPSON, from the Committee on Elections, submitted the following

MINORITY REPORT:

The second Congressional district is composed of the counties of De Soto, Marshall, Tate, Panola, La Fayette, Tallahatchie, Yalobusha, Benton, Tippah, and Union.

The election for members of Congress was held on the 2d day of November, 1880, and the candidates for Congress were Thomas W. Harris (Greenbacker), George M. Buchanan (Republican), and Van H. Manning (Democrat).

The motion of contestant, in which he set out his grounds of contest, and the reply of contestee thereto, are as follows, to wit :

Notice of contest.

HOLLY SPRINGS, Miss., November 23, 1880.

Col. VAN H. MANNING:

You will take notice that it is my intention to contest your election as a member of Congress for the second district of Mississippi, as a result of the election held for the election of a member of Congress on Tuesday, November 2, 1880, in said district, and on the following grounds:

1st. That in a portion of the counties comprising said district such persons were not appointed, neither was such representation given to the different political parties in said counties in the appointments of county commissioners of election as was designed and required by law.

2d. That in a portion of the counties comprising said district election districts are abolished and other election districts established without complying with and in violation of law.

3d. That in a portion of the counties comprising said district the registration of voters was not conducted as required by law, thereby depriving a large number of persons (of lawful right) of the privilege of registering and voting.

4th. That at a large number of voting places in said district—in the appointment of inspectors of election—such persons were not appointed, nor was such representation given (in making said appointments) to the different political parties, as was designed and required by law.

5th. That in several of the counties comprising said district a large number of persons lawfully entitled to register were refused registration, and that the registration and transferring of votes was discontinued many days prior to the time contemplated by law, thereby depriving a large number of persons lawfully entitled to register (or transfer) from the right of registering or transferring and voting; and that in a portion of said counties the registration books were for a time removed from the place designated by law for their keeping, thereby depriving a large number of persons (of lawful right) of the privilege of registering (or transferring) and voting.

6th. That at a large number of voting places in said district many lawful voters were not permitted to vote, their votes having been tendered and rejected by the inspectors of election; that such unlawful interference and hinderance was permitted and practiced (such as is specially forbidden by law) as to obstruct and confuse the voter in the act of voting, or to deceive and prevent a large number of voters from delivering their ballots at the proper voting places; that a large number of persons were permitted to vote for you who had no legal right to vote.

7th. That at many of the voting places United States supervisors of election were not permitted to exercise the duties of their office, being prevented therefrom by unlawful interference of other officers of election, or from other sources, in violation of law, and to such an extent as to prevent their ascertaining the result of the election and from performing other duties required of them by law; that no separate list of the names of voters were kept by the clerks of election, as was required by law; that the polls were not opened at the time required by law, were not kept open continuously from 9 a. m. till 6 p. m., as required by law, and that upon the closing of the polls the counting of the vote and making up of returns was not done at the voting places nor at the time required by law.

8th. That at many of the voting places ballots were received and counted that were not lawful ballots in form and print; that inspectors of election rejected and refused

to count ballots that were lawful after the same had been lawfully deposited in the ballot-boxes; that inspectors of election (with knowledge of the fact at the time) permitted ballots to be voted that were not lawful ballots; that during the hours prescribed by law for voting voters were harassed and disturbed in such a manner as to prevent their voting in a free, fair, untrammeled, and peaceable manner.

9th. That the names of a large number of legally registered voters were not placed upon the poll books (by the officers whose duty it was to place said names on said books) used at many of the voting places, and that in consequence thereof said legally registered voters were not permitted to vote, their votes being refused by the inspectors of elections, said inspectors giving as a reason for such refusal to receive such votes that the names of the parties applying to vote were not on the poll-books.

10th. That the entire vote polled and counted and returned at a part of said voting places was unlawfully rejected and thrown out (and not counted) by the county commissioners of election on making up their returns of the total vote of the county.

11th. That at a portion of the voting places the ballot-boxes were not opened in public when the polls closed, nor was the vote counted in public, nor at the time required by law to be counted; that in making up the returns a large number of ballots were counted as having been cast for you, when in truth and in fact such ballots were cast for other persons, or were ballots placed in the boxes in a manner not authorized by law.

12th. That at many of the voting places a much larger number of votes were returned as having been polled than were actually polled at said voting places; that at many of the voting places the poll-books for said places unlawfully contained the names of a large number of voters, which voters had no right to a vote at such voting places, but resided in other election districts, and that the names of said voters also appeared on the poll-books of the voting places of election districts to which said voters of right belonged.

13th. That at many voting places the election was conducted in many respects in utter disregard of law and the rights of voters; that the registration books and the poll books of a portion of the counties and election districts in said district were at divers and sundry times not in the custody and keeping of the proper lawfully constituted officers, but were on divers and sundry occasions in the care and possession of persons not lawfully entitled to such care and possession; that at a portion of the voting places lawful ballots that were cast for me were not counted for me, but were (unlawfully) counted as having been cast for you, and were so returned by the officers of election; that there were a greater number of legal voters of said district who voted (or who offered to register and vote), and who were unlawfully prevented therefrom, who desired me as their Representative in Congress than there were who desired you as their Representative in Congress from said district.

Very respectfully,

GEO. M. BUCHANAN.

Contestee's answer.

Capt. GEO. M. BUCHANAN:

SIR: I am in receipt of a notice from you, dated November 23, 1850, of your intention to contest my election as a member of Congress of the 2d district of Mississippi, as a result of the election held on the 2d November last.

To said notice I make the following answers, to wit:

First answer. Protesting against the truth of the allegations in said notice, I object and say that said notice is so insufficient and defective that I need not deny or admit the allegation thereof, for the reasons, to wit, said notice does not specify particularly the grounds upon which you rely, and gives no reason for failing so to do.

2d. The allegations are only conclusions of law and general averments of wrongdoing in some undefined portions of the district, by unnamed election officials of precincts not specified, in unnamed counties, or by persons not named or described, and in places and by means not specified, and in violation of laws and the rights of others not designated.

3d. Your allegations are so vague and uncertain that I am not informed as to the persons or officials whom you accuse of crime, nor where committed, nor do you aver that such wrong doings were not instigated by you or that they were known to or acquiesced in by me, or that the result of the election was changed by reason of the matters set forth.

Second answer. Without waiving any objection to the manifold vital defects of said notice, but reserving all benefit and advantage thereof, I deny each and every ground of contest set forth in said notice, and deny each and every allegation therein contained, and aver that throughout said Congressional district a free and fair election

was held in all respects, except that in the county of Marshall and other counties, in every precinct, divers colored voters who wished to vote for me for member of Congress were deterred and prevented from doing so by reason of the threats of personal violence and other means of intimidation used and employed by other colored people, the neighbors of such voters (the names of all of whom are unknown to me), being instigated thereto by those that advocated your election, whereby I received less votes by one thousand or more than I otherwise would; and all such voters by means of such intimidations were induced, contrary to their wishes, not to vote at all, or to vote for you, and thereby the great majority of votes that I should have received more than you at said election was reduced to the number of about five thousand two hundred and fifty.

Third answer. I charge and aver that you have made the wholesale charges of all kinds of crimes and irregularities contained in your said notice without specification of persons or places, not because you had reason to believe that any one of them had been committed to your injury, but with the deliberate purpose to evade the limitation of the statute and to speculate upon any future discoveries of evidence, and so you have made unlawful, vexatious, and fraudulent use of the notice and process authorized by statute, and the same should be quashed and dismissed.

Respectfully, yours,

VAN H. MANNING.

WASHINGTON, December 20, 1880.

It will be observed that in the beginning the contestee claimed that the notice of contest was insufficient, and has insisted for that cause that the case should be dismissed.

In whatever manner any failure of proper notice might affect the right of contestant in this case (for insufficiency of pleading), if upon examination of the facts in the case it appear that the sitting member is not entitled to a seat it is the duty of the committee to so report.

It appears that the race in this district was strongly contested by three candidates, representatives of the three political parties of the country.

ORGANIZATION OF PARTIES.

We will first notice the evidence bearing on the organization of each of the parties in the district at the time of this election.

We would prefer to eliminate from our report all reference to the organization of voters by *colors*, but as this question is fully developed by evidence we cannot well avoid it.

The contestee in his answer evidently relies upon the support of a large number of colored voters to bear out his right to a seat, and it is in his answer to notice of contest that the division of electors by color is first referred to in the case.

We have in evidence conflicting statements as to the number of voters in the district.

On page 393 of Record the contestee places in evidence a recent State census of Mississippi, and on page 199 is found the United States census for 1880, placed in evidence by the contestant.

Taking the *latter*, and applying the general rule of one voter to every five inhabitants, there are 19,743 colored voters and 17,155 white voters in the district, showing a majority of colored voters of some 2,600 while the *former* shows that there are 19,780 white voters and 18,998 colored voters in the district. We have examined the facts and comparison made in contestant's brief (page 50) in relation to the State census, and are disposed to be governed by the United States census. As to manner and spirit of the canvass, it is the universal testimony that each party was active and zealous in its efforts to obtain a full vote, and that the canvass was conducted with an industry on the part of all three parties seldom developed in election cases. That each party made

most extraordinary efforts to bring every possible voter to the polls is shown all through the evidence. And for that reason we do not deem it necessary to refer to it in detail. Nor is the manner in which the voters were organized and came to the polls less fully shown. Especially is it developed in the evidence of witnesses introduced by contestant upon this point.

We are disposed to give more than ordinary weight to the evidence of witnesses who (politically) are not supposed to have any special interest in the result of this controversy. We therefore submit the evidence as follows, which is fully corroborated throughout the testimony. See Record, p. 19, q. 9; p. 22, q. 6 and 7; p. 26, q. 8; p. 23, q. 3; p. 35, q. 3; p. 40, q. 3; p. 464, q. 16; p. 445, q. 405; p. 474, witness Settle; p. 476, witness Matthews; p. 51, q. 3; p. 210, witness Nunnally; p. 189, q. 1; p. 185, q. 5; p. 193, q. 8; p. 56, q. 10.

Page 205:

JOHN S. BURTON, being sworn according to law, testifies as follows:

Question 1. You have been heretofore examined in this case, have you not?—**Answer.** I have.

Q. 2. State what your personal relations are to Mr. George M. Buchanan, the contestant in this case, and what they were during the canvass of 1880: also state your connection with the canvass of that period, and the position that you occupied then to Mr. Buchanan in the canvass.—**A.** I am a close friend to Mr. Buchanan. At the commencement of the campaign I agreed to take charge of his Congressional candidacy, in which I employed speakers in the district, and employed speakers out of the district to come in this district to make speeches for him. And I attended to the organization of clubs and to all campaign matters in which he was interested.

Q. 3. State, as well as you can, the manner in which the campaign was conducted throughout the district on the part of the Republicans, giving the names or numbers of speakers and number of speeches made, as near as you can. State time of commencement of canvass; also state character of Democratic and Greenback canvass.—
A. Our campaign was conducted very actively. The canvass commenced about the 15th of July, 1880. Capt. William Spears, one of the electors of the State at large, accompanied by Captain Buchanan, spoke at the principal county seats in the western part of the district. Our meetings were extensively advertised and largely attended. They spoke in Tallahatchie, Panola, Tate, De Soto, and Benton Counties. About the same time Col. R. W. Flirney, one of the State electors at large, commenced the canvass in the eastern part of the district, speaking at New Albany. The Republican convention was held at Oxford, August 15, when Captain Buchanan was nominated. It was a very largely attended convention; every county was represented with but one exception. On or about the first of September the canvass was renewed. Colonel Mister, elector for fifth district, J. T. Settle, elector for second district, and W. F. Frazee, alternate elector for first district, all came into this district and kept up the canvass incessantly until the election. In addition to the prominent speakers mentioned, Hon. James Hill, chairman State executive committee, Col. Thomas Hunt, United States marshal, and Maj. W. H. Gibbs, all of the very best order of Republican speakers, spent some two weeks in canvassing the district; and, in addition, Captain Buchanan made speeches night and day for the entire time, commencing about the 15th of September and including a day or so before the election. In addition to these speakers there were local speakers constantly engaged in the canvass all the time in prominent precincts in the district, and the canvass was conducted with the same activity and industry on which campaigns were conducted while the Republican party were in power in the State. No effort was spared by myself or Captain Buchanan, or his friends, to see that every vote in the district was brought out. The Democrats did not open their campaign for some weeks after the Republicans commenced, and so far as my observation went their campaign was not conducted with as much as usual activity until toward the close of the canvass. The Greenbackers also made a thorough and active canvass of every part of the district. As near as I can approximate, there were from two hundred and fifty to three hundred Republican speeches made in the district. I estimate this by the number of speeches and the time they occupied.

Page 331:

W. S. FEATHERSTON, having been duly sworn, testified as follows, to wit:

Interrogatory 1. How long have you lived in the State of Mississippi and the county of Marshall? What official positions have you held, if any?—**Answer.** Forty years

in the State of Mississippi and twenty-three in the county of Marshall. I have been a member of the legislature and a member of Congress in the House of Representatives.

Int. 2. What is your acquaintance with the people of Marshall County, either personally or otherwise?—A. My acquaintance with the people of Marshall County is pretty extensive, and is now.

Int. 3. What is your profession; to which political party do you belong, and what is your official position in your party, and what was it during the political campaign of 1880?—A. I am a lawyer by profession. I am a member of the Democratic party. I am now, and was during the campaign of 1880, chairman of the Democratic committee of Marshall County.

Int. 4. What was the character of the political contest of 1880 in this Congressional district; was it one in which little interest was manifested by both Republican and Democratic parties, or otherwise?—A. It was an interesting campaign, and in which both the Republican and Democratic and also the Greenback party took considerable interest, especially in Democratic and Republican parties.

Int. 5. What was the character of the Democratic campaign of 1880 in Marshall County, active or otherwise; was or not the Democratic party of the county thoroughly organized? Which party made the most active campaign?—A. The Democratic campaign in Marshall County in 1880 was active and enthusiastic. I am certain that the party was well organized. The Democratic party made the most active campaign. I am certain that it did; and in every neighborhood in the county we had every committee appointed that we thought was necessary to organize the party there, and to bring out its full vote—such a campaign as we have been in the habit of conducting in this county for several years past.

Page 200:

Dr. R. J. LYLES, being duly sworn according to law, testified as follows:

Question 1. Where do you reside? How long have you resided in Marshall State? What is your occupation? Of what party are you a member, and to what extent have you engaged in the interest of your party in campaign of 1880? State to what extent the Greenback party of this county is composed of white or colored people, from whom it drew the most votes at last election (Democratic or Republican party), and to what extent from either.

(Objected to by the contesting upon the ground that it is not rebutting testimony, but original.)

Answer. I reside at Watson P. O., Marshall County, Miss.; lived in this place about eleven years; am a physician by occupation. I belong to the National Greenback party. I took part in the canvass, actively canvassing, making speeches, in this county. The Greenback party in this county, to my best information, is composed principally of the white people, at least four-fifths of the Greenback party.

Q. 2. Were you not a close personal friend of Col. T. W. Harris, the Greenback candidate for Congress, and did you or not manage the canvass in this county for him? Did you not do it chiefly?

(Objected to on same ground as to No. 1.)

A. I am a close personal friend of said Col. T. W. Harris. I took an active part in his behalf, and managed his interest in the western part of the county, particularly that section where I reside.

Q. 3. At or about the close of the canvass did anything occur to induce you to advise Colonel Harris, the Greenback candidate, to withdraw from the canvass, or not so advise him? And, if so, state freely and particularly the reasons for advising him, and from what source you received your information inducing you to give such advice.—A. Something did occur. A short while before the election, probably a week, I had a conversation with Col. Van H. Manning, the candidate of the Democratic party for Congress, in which he assured me the colored voters of the district were solid for Buchanan, the Republican candidate for Congress. He requested me to tell Col. T. W. Harris, the Greenback candidate for Congress, that he (Colonel Harris) was "gone up," and to come home. I assured Colonel Manning that if his statement was correct I would prefer that Harris would withdraw from the canvass. Manning said that, according to his best knowledge and judgment, his statement was correct. On that assurance, together with my personal knowledge of the fact that the colored voters in my neighborhood were solid for Buchanan, I telegraphed Col. T. W. Harris at Batesville, Miss., that his chances here were compromised; that the colored voters were solid for Buchanan. Colonel Manning brought said telegram to me at Col. T. W. Harris' residence at Batesville, and I sent the telegram to Col. T. W. Harris.

Q. 4. Was it or was it not a fact, at the time that Colonel Manning made the foregoing statement to you, that he had canvassed the entire ten counties comprising the Congressional district, and that the canvass absolutely closed within a few days after the date of the said conversation referred to?

(Same objection as before.)

A. He stated to me that he had made an entire canvass of the district, and that the statement made to me was founded on his information that he had gained during the canvass. This was but a few days before the election.

Q. 5. In your reply to question three, do you mean to refer exclusively to the colored race or otherwise?—A. I mean the colored vote exclusively.

Q. 6. State to what extent, if you know, the colored vote that voted was cast for Buchanan, or other candidates (as applied to precincts in the western part of the county), at the last election?—A. From all information I have, it was a solid Republican vote for George M. Buchanan for Congress in the precincts referred to. So far as my personal knowledge goes, it only refers to my own box.

Q. 7. To what extent is the negro vote in the district referred to Republican?—A. Pretty unanimous.

Page 214:

Col. THOS. W. HARRIS, being sworn according to law, testifies as follows:

Question 1. State where you reside; how long you have there resided; your occupation; how long you have pursued said occupation, and to what extent in the second Congressional district of Mississippi.—Answer. I reside in Holly Springs, Miss., and have resided there since about the year 1850; I am a lawyer; have been upwards of thirty years, and engaged in the duties of my profession in several of the counties of the second Congressional district since I have lived in Holly Springs; my practice has been general and quite extensive.

Q. 2. With what political party have you been identified with prior to the year 1879? State also what official position you held in said party during the year 1876, and since that time.—A. I was a member of the State executive committee of the Democratic party in 1877 and 1878; and also chairman of the executive committee of that party for the county of Marshall; and was a member of and acted with the Democratic party until 1879; since which time I have been acting with the National Greenback Labor party.

Q. 3. Were you a candidate for office at the election November 2, 1880? If so, state for what office; if you made a canvass of the second Congressional district, to what extent; also state the extent of your acquaintance with the politics of the voters of said second Congressional district.—A. I was the candidate of the National Greenback Labor party for Congress for the second Congressional district at the election in November, 1880, and as such canvassed the district generally; my knowledge of the politics of the voters of said district is such as such a canvass would give, in connection with my long residence in the same, engaged in my profession, and having taken a general interest in politics since I attained my majority.

Q. 4. What class of persons constitute the three political parties in this district? State the different divisions as near as you can as to color.—A. A very great majority of the colored voters of the district belong to the Republican party; the white voters are divided generally between the Democratic and Greenback parties; colored voters who act and vote with the Democratic party are in my opinion very few in number; in the election of last year my observation and information lead me to believe that out of the thirty-five hundred and eighty-five votes reported to have been cast for the Greenback candidate for Congress in the said district there could not have been more than about one thousand of them colored, most of whom live in Yalobusha County; the white voters who act with the Republican party in said district I don't think are at all numerous.

Q. 5. Have or have you not, since the election, fully and particularly informed yourself as to the number of votes you received at said election at each of the various counties and precincts in said district?—A. I have seen statements purporting to be authentic as to the number of votes reported to have been cast for me, and have heard statements from friends upon the same subject.

Q. 6. Did you witness just preceding the election a conversation between Colonel Manning, candidate for Congress, and Dr. A. M. Lyle on the subject as to how and for whom the colored voters of this district were going to vote? If so, state what was said between them on the subject.

(Objected to on the ground that the question is original and should have been asked, if at all, during the time allowed to take testimony-in-chief.)

A. In a discussion between Colonel Manning and myself at Watson, in this county, I think the night preceding the day of the election, the question arose as to a report that Dr. Lyle had abandoned me and intended to support Colonel Manning, and that Lyle had sent me a dispatch suggesting my withdrawal from the canvass because the colored vote of the district had concentrated upon Captain Buchanan, the Republican candidate for Congress. Dr. Lyle was present and stated to the audience, in my presence and Colonel Manning's, that he (Lyle) had met with Colonel Manning and was told by him to write or telegraph me that I had better withdraw, as the colored vote was all going for Buchanan; that he (Lyle) replied such was the condition of things.

in his neighborhood, and that upon the statement made to him by Colonel Manning he had accordingly telegraphed me at Batesville, in Panola County, that the negroes were all going for Buchanan, or words to that effect; that he sent me the dispatch based alone upon what Manning had told him, except as to the condition of things in his own neighborhood; that he did not profess to know what was the condition of affairs beyond his own neighborhood. I never received the foregoing dispatch at Batesville, having left before it was received. The foregoing is substantially what occurred as I remember it.

Q. 7. What proportion of the white vote of this Congressional district are opposed to the Democratic party, and what proportion of said vote would vote against the candidates of said party at an open, fair election, and upon full assurance that their votes would be counted as cast?

(Objected to as irrelevant, incompetent, and illegal.)

A. I can only answer as a matter of opinion. It would depend very much upon the questions involved and what parties were engaged in the contest. I think, however, that one-fourth or one-fifth of the white voters of the district are opposed to the present policy and management of the Democratic party and would cast their votes against it.

Re-examined:

Q. 1. State what proportion of the colored vote in this district voted the Democratic ticket, and what proportion of the white vote voted the Republican ticket, as near as you can in numbers as to each party, as estimated from your information gained during the canvass. State fully.

(Objected to on ground that it is original, and not in rebuttal of anything drawn out on cross-examination, and as incompetent.)

A. I can only give an opinion in answer to this question. From all the information in my possession, my opinion is that there were fully as many, and I think more, white votes cast for the Republican candidate for Congress than there were colored votes for the Democratic candidate. When the extraordinary efforts made by the Republican party had succeeded in reorganizing the colored vote, my opinion is that the work done by that party was pretty thoroughly successful. I know of no county in the district in which the Greenback party succeeded in maintaining its control over the colored vote, except in Yalobusha. In addition I am satisfied that some white Greenbackers had become so much incensed in consequence of the warfare waged against them and their party by the Democratic party that, despairing of the success of their own candidate, they voted for the Republican candidate; and further than this deponent saith not.

Q. 2. What is the standing of the contestant, George M. Buchanan, in his party and as a citizen?—A. I think his position in his party is a prominent and controlling one, certainly in his section of the State. As a citizen, he is kind, charitable, generous, and public-spirited, and I know nothing to his detriment except that he belongs to what is known here as the Radical party, and that he became a candidate for Congress in the last election to my detriment. As a candidate for office I am satisfied that he is considerably stronger than his party, in this county particularly. As a neighbor he is equal to any man.

X Q. 4. You have been asked as to the standing and character of George M. Buchanan as a politician and as a gentleman. Please state as to the character and standing of Van H. Manning in both respects.—A. Having been three times nominated by his party as a candidate for Congress, and returned as elected, is a sufficient answer as to the character and standing of Van. H. Manning with his party. In all the elements of kindness, generosity, and charity, he is the equal of any—infinitely too much so for his own good.

Witness Mahon (page 106, Record):

Q. 7. Do you know of a newspaper published in Holly Springs known as the Holly Springs "South"? If so, state the political party that that paper advocates.

(Question objected to and ruled out.)

Q. 8. Did you or not read in the Holly Springs "South," a Democratic newspaper published in Holly Springs, and published on December 8, 1880, the following language:

[The South, Holly Springs, Miss., December 8, 1880.]

BUCHANAN TO CONTEST.

It seems to be generally believed by our exchanges that Buchanan will contest for Manning's seat. If he ever gets it, it will be by an utterly unscrupulous partisan decision by the House of Representatives. Never was there a fairer election in any district of the State than that of this, when Manning was elected. The negroes gen-

ally voted for Buchanan. The whites divided between Manning and Harris. Every man of the three parties voted as he pleased, except those who voted for Buchanan, and they went as a flock, under instructions, by which they were easily fooled into voting for him. The ballots were printed in accordance with the law of the State and counted. Buchanan was beaten by not getting votes enough—that is all. He will have to be elected at Washington, if he ever is. It will not be by votes of the people of Mississippi. And when Congress seats Buchanan the second Congressional district of Mississippi will have no Representative.

(Question objected to and ruled out as before, and question not permitted to be answered.)

Q. State whether or not you know the editor of the Holly Springs "South," and his character for political intelligence; if so, state his character for political intelligence.—

A. I know Mr. Tyler when I meet him, and his character for intelligence is good.

Q. 9. State, if you know, in what party interest that newspaper, the Holly Springs "South," acted during the campaign of 1850, and what candidate for Congress it advocated.

(Objected by counsel for contestee as being irrelevant, and objection sustained and question not permitted to be answered.)

For reasons which will hereafter appear apparent, we have briefly referred to the evidence of the voting strength of each of the political parties; the class of voters from which each party was organized; the canvass made by each; and the manner in which each party's vote turned out and came to the polls.

INTIMIDATION OF COLORED VOTERS BY CONTESTANT'S FRIENDS.

We have very carefully examined the evidence relating to the intimidation of colored voters by contestant's friends (as is alleged by contestee, in his reply to notice of contest), and do not find that the evidence discloses a single instance where a colored voter was deprived of voting for contestee by reason of threats or intimidation from any source. The evidence discloses the fact to be that contestee received but few of the votes of colored voters, and that there was by far a larger number of white voters who voted for contestant than there were colored voters who voted for contestee. The vote as returned is stated as follows, upon page 393 of the Record.

| | |
|----------------------------|--------|
| Harris, Greenbacker..... | 3,585 |
| Buchanan, Republican | 9,996 |
| Manning, Democrat | 15,255 |

The evidence shows there to be about 19,700 colored voters and about 17,100 white voters in the district, with some 2,600 more colored voters than whites; that the colored voters are Republicans, with few exceptions, and so voted (or made the effort to vote), as is shown to be the case also with quite a number of white voters; and that the white voters generally were divided (in a measure) between the Democratic and Greenback candidates. Granting that the canvass was equally thorough and active on the part of all parties, and that the voters generally came to the polls, we cannot resist the conclusion that on the day of the election the voting strength of contestee's party was in a minority to the extent of 5,000 to 6,000 voters.

Yet notwithstanding this evident condition of the two parties on the day of the election, we are confronted with a return, heretofore referred to, giving the contestee a majority of some 5,300 voters. Were we to take the State census as evidence in reaching a conclusion on this point, contestee's party would still be in a large minority.

There are only 17,155 white voters in the district. The proof is clear that Harris, the Greenback candidate, received 3,585 votes, of which (not exceeding) 1,000 were colored, leaving him 2,585 white votes.

It is further clearly proven that quite a number of white voters did not go to the polls. (See evidence, Howze, p. 19; Newsom, p. 22.)

It is further proven that contestant received a number of white votes, and yet, according to the returns, the contestee is credited with 15,215 votes, which is manifestly impossible under the circumstances.

On the other hand, the contestant is credited with only 9,996 votes, while there are 19,800 colored voters in the district, who, according to the proof of contestee's own friends, were all solid for contestant, and came to the polls and voted or offered to vote.

This again is a manifest impossibility. This at once throws suspicion on the fairness of the count, and when the whole of the election machinery was in the hands of contestee's friends the burden of showing the fairness of the count should be upon him when a reasonable doubt of fairness has been established by the proof. This brings us to a consideration of the evidence tending to show how this result was brought about (after first examining the election laws of Mississippi bearing on the points in controversy).

ELECTION LAWS, CODE OF 1880.

SEC. 105. The books of registration of the electors of the several election districts in each county and the poll-books as heretofore made out shall be delivered by the county board of registration in each county, if not already done, to the clerk of the circuit court of the county, who shall carefully preserve them as records of his office, and the poll-books shall be delivered in time for every election to the commissioners of election, and after the election shall be returned to said clerk.

The clerk of the circuit court of each county shall register on the registration book of the election district of the residence of such person any one entitled to be registered as an elector, on his appearing before him, and taking and subscribing the oath required by article seven and section three of the constitution of this State, and printed at the top of the pages of the registration books, which subscription of the oath aforesaid shall be by the person writing his name or mark in the proper column of said book.

Section 121 of the Mississippi Code of 1880 is as follows:

Two months before any general election and any election of Representatives in Congress, and any election of elector of President and Vice-President of the United States, the governor and lieutenant-governor, or president of the senate if the lieutenant-governor is performing the duties of governor, or if there is no lieutenant-governor, and the secretary of state, or a majority of such officers, shall appoint in each county in this State "commissioners of election," to consist of *three competent and suitable men, who shall not all be of the same political party*, if such men of different political parties can conveniently be had in the county, and who, for good cause, may be removed in the same manner as they are appointed. Before acting the said commissioners shall severally take the oath of office prescribed by the constitution and file it in the office of chancery clerk of the county, who shall preserve such oaths. While engaged in their duties the said commissioners shall be conservators of the peace, with all the powers and duties of such, in the county in which they are acting. They shall continue in office for one year unless removed and until successors are appointed.

Section 124 of the Mississippi Code of 1880 is as follows:

On the last Monday of October preceding a general election, and five days before any other, the commissioners of election shall meet at the office of the clerk of the circuit court of the county, and carefully revise the registration books of the county and the poll-books of registration of the several precincts, and shall erase therefrom the names of all persons improperly thereon, or who have died, removed, or become disqualified as electors from any cause, and shall register the names of all persons illegally denied. All complaints of a denial of registration may be made to and be heard and decided by the commissioners of elections, who shall cause the books of registration to be corrected, if necessary, so as to show the names of all qualified electors in the county and such books shall be *prima facie* evidence of the names and number of the qualified electors of the county.

SEC. 125. The clerk of the circuit court shall attend such commissioners, if so requested, and shall furnish them the books of registration and the poll-books, and

shall render them all needed assistance of which he is capable in the performance of the duties in revising their lists of qualified electors.

Section 133 is as follows :

Prior to any election the said commissioners of elections shall appoint three persons for each election precinct to be inspectors of the election, who shall not all be of the same political party, if suitable persons of different parties are to be had in the election district, and if any person appointed shall fail to attend and serve, the inspectors present, if any, may designate one to fill his place, and if such commissioners of election shall fail to make such appointment, and in case of failure of all those appointed to attend, any three qualified electors present when the polls shall be opened may act as inspectors.

Section 136 is in the following words :

All elections by the people of this State shall be by ballot. The poll shall be opened at nine o'clock in the morning and be kept open until six o'clock in the evening, and no longer; and every person entitled to vote shall deliver to one of the inspectors, in the presence of the others, a ticket or scroll of paper on which shall be written or printed the names of the persons for whom he intends to vote, which ticket shall be put in the ballot-box, and at the same time the clerks shall take down on separate lists the name of every person voting; and when the election shall be closed the inspectors shall publicly open the box and number the ballots, at the same time reading aloud the names of the persons voted for, which shall be taken down by said clerks in the presence of the inspectors; and if there should be two or more tickets rolled up together, or if any ticket shall contain the names of more persons for any office than such elector had a right to vote for, such ballot shall not be counted.

In brief, the circuit clerk of each county is the sole registrar of all the voters. The registration books are records, and are required to be kept in his office. The registrar is required to register voters any day in the year that the voter may choose to apply for registration, and every person desiring to register is required to come to the county seat for that purpose, and must make oath and sign the registration books.

The State board, consisting of the governor, lieutenant-governor, and secretary of state, appoint three election commissioners for each county, who are to be selected for their competency and suitableness to discharge the duties required of them. They must not all be chosen from the same political party.

These county commissioners are required to meet at the office of the registrar immediately preceding every election and correct the registration and poll books, "so as to show the names of all qualified electors in the county." The registrar is required to assist them in the discharge of the latter duty. These commissioners appoint three inspectors to each voting place in the county, who must be selected from electors suitable and competent to perform the duties of inspectors (count the vote, make out, verify the returns, &c.), and these inspectors are to be selected from different political parties.

The election commissioners hold in their hands the entire election machinery of their counties; they establish and abolish election precincts at will; they revise the registration and poll books, erasing names therefrom as occasion demands; they sit as a court to decide appeals from the circuit clerk when complaint is made that registration is improperly refused; they appoint all election officers in their counties, including peace officers to preserve order at the voting places; they receive, compute, and return the whole vote of their counties; and to exercise these great powers and delicate trusts the concurrence of only two of the three commissioners is required. Will it be pretended that men who are utterly illiterate are "competent and suitable" for so important an office, or that their appointment is a compliance with the law in any respect?

Before proceeding to review the acts of the election officers, it is well enough to call attention to a circular issued by General Featherstone at an early day of the canvass. The importance of this circular is in the

fact that General Featherstone is contestee's own witness, and is a man of national character, having been a Representative in Congress before the war, and now circuit judge in the State of Mississippi. (See his evidence, Record, p. 133.)

Page 334:

X Int. 13. Did you as chairman of the Democratic committee, and by authority of the committee, issue and cause to be published the following call, which I here append as part of this question, marked G. M. B.?

MASS CONVENTION.

There will be a mass convention of the Democrats of Marshall County at the courthouse in Holly Springs, at 11 o'clock a. m., on Saturday, the 24th day of July, 1880, for the purpose of electing delegates to attend a district convention in Water Valley, Miss., on the 11th day of August, 1880, to nominate a candidate for Congress.

Let everybody come.

Let the enemy know in the beginning that in this campaign the Democracy will win at all hazards.

By order of the executive committee.

W. S. FEATHERSTONE,
Chairman.

ARTHUR FANT,
Secretary.

(Indorsed:) G. M. B.

A. The executive committee instructed the secretary to prepare and publish a call for the meeting indicated in the card, and the call was prepared and published by the secretary.

The foregoing may very properly be considered the initial step on the part of contestee's friends towards carrying the election in the manner indicated by the circular.

As we have said in another Mississippi case—*Lynch vs. Chalmers*—decided in this Congress—

The general doctrine in construing election statutes is, that they are to be construed liberally as to the elector, and strictly as to the officers who have duties to perform under them. A statute directing certain things to be done by election officers ought to be followed by them with a high degree of strictness, but duties to be performed by the electors, as declared by statute, are directions merely.

We do not propose to discuss the great and vital importance of an impartial registration of voters where it is made a condition precedent to the exercise of the elective franchise, as is the case under the constitution and laws of Mississippi.

APPOINTMENT OF ELECTION OFFICERS.

The evidence is very full that both the Republicans and Greenbackers of the counties challenged made every effort by petition and otherwise to secure the appointment of such (reasonable) number of both county commissioners and also precinct inspectors as they were fairly entitled to under the law, and it is no less clear that their wishes were almost entirely disregarded, especially in counties having large Republican majorities *prima facia*. We submit the following brief of evidence on this point:

DE SOTO COUNTY.

J. F. Pratt, on page 24, testifies that "the county board of election commissioners was composed of two well-known Democrats and one colored man, neither of whom were identified with the Republican party; the colored man can neither write nor

read writing, and that the Republican county committee endeavored to secure the appointment of Newson, a well-known and competent Republican, as commissioner, and failed."

See also testimony of Nelson, on page 37, showing "that an ignorant colored man was appointed commissioner over protest of Republicans of the county;" and testimony of Anthony Mathews, the commissioner appointed, on page 28, showing that he could not write or read writing, and knew nothing of the correctness of the returns except what was told him by the other commissioners.

LA FAYETTE COUNTY.

B. P. Scunggs, an intelligent white Republican, was recommended for commissioner by his party friends, and a negro, "Thomas Jefferson, who has very limited education, if any, was appointed" (see page 51). Testimony of Jefferson, the colored man appointed commissioner, page 71, shows that no Republican recommended his appointment, and that he was appointed on recommendation of the chancery clerk, county treasurer, and other prominent Democrats; and that he was not consulted by his co-commissioners in the appointment of election officers; and his evidence will show his utter unfitness for the position. The testimony of Beauland, page 311, shows that he and one R. S. McGowan were the two Democratic commissioners; and the testimony of E. Nunnally, page 211, shows the unscrupulous character of McGowan, that he said to witness that he would "tuff ballot-boxes to beat the Republicans," and this witness testifies that he would not believe McGowan on oath.

TALLAHATCHIE COUNTY.

The testimony of T. W. Turner, pages 186-7, shows that no regard was paid to the wishes of Republicans in appointing commissioners; that two Democrats and one incompetent colored man were appointed. The Republicans desired the appointment of Littlewort, whose character for intelligence will be shown by his evidence on pages 194-5. The want of educational qualifications for the position of commissioner is shown by the evidence of the colored commissioner himself, on pages 195-6, which discloses the fact that he could not read the manuscript of his evidence then being given.

TATE COUNTY.

In this county, as will be seen in the evidence of Wright on pages 172 to 174, two of the commissioners appointed were Democrats, and the other a Greenbacker, and that when Jones, the Greenback commissioner, failed to secure the appointment of the election officers he proposed, left the board, saying he would have nothing more to do with it, and that only four of the election officers for the county recommended by the Republicans were appointed, and only two of them served. (See testimony of Shands, page 402.)

MARSHALL COUNTY.

In this county, as will be shown by the evidence of McCorkle, on pages 123 to 125, two Democrats and one competent colored Republican were appointed commissioners, and that the Republican commissioner resigned on account of the disregard of his rights as a commissioner by his colleagues, in abolishing election precincts, and in transferring others, without his presence or consent, and in signing his name to notices of the same, thus leaving the election to be managed by the two Democratic commissioners; and on pages 336 to 339, in the testimony of Mr. Wallace, one of the Democratic commissioners, and a brother-in-law of the Democratic candidate for Congress, it is shown that some time in October, *after serving as commissioner nearly the entire canvass, and after the work of abolishing and transferring election precincts had been accomplished*, Mr. Wallace also resigned his office out of considerations of delicacy, and his successor was afterwards appointed, but it does not appear that any successor was appointed to the Republican commissioner.

The manner in which these county commissioners performed their duty in appointing the inspectors of election, especially in counties that were manifestly largely Republican, is very fairly stated by contestant's counsel, as follows:

As will be seen from the evidence of Johnson, page 231, the Greenbackers were not recognized as a party, and there was no pretense of appointing their men as election

officers; and the one inspector pretendedly accorded to the Republicans was not always appointed, and when appointed was almost universally so utterly incompetent as to render the appointment worse than a mockery. Take for illustration the county of De Soto, where there are several thousand voters, sixteen voting places, and as a consequence ninety-nine election officers; and of these one inspector appears to have been a Greenbacker (see page 244), and of the others not more than *sixteen* belonging to the parties opposing the party of contestee, and *fourteen* of them testify that they cannot read or write. Incredible as this statement may appear, it will be fully verified by the evidence on pages 10, 12, 13, 15, 28, 32, 43, 45, 46, and 47, this being the testimony of the officers themselves. That *suitable* Republicans and Greenbackers could be had in the election districts, and that efforts were made in writing and in person by representatives of both the opposing parties to have these *suitable* and competent men appointed, will be fully shown on pages 25, 27, and 231. That the appointment of intelligent Democrats, even when recommended by Republicans, was refused will be seen in the evidence of Scruggs at the top of page 52.

Not to dwell tediously upon it, the two counties of La Fayette and Marshall have about the same number of election officers, belonging to the different parties in about the same proportion, and *eleven* of these in each county testify that they cannot either read or write. (See pages 57, 60, 65, 66, 67, 68, 69, 72, 73, 74, 92, 95, 103, 109, 114, 116, 117, 119, 121, 125.) That *suitable* persons of the opposition parties could be found in the election districts of these counties, and that earnest efforts were made to secure their appointment, see pages 51, 105, and 203. For other appointments of election officers of the same character in other counties, read pages 170, 185, 190, 193, 178, 187, and 174. In the five counties of Marshall, La Fayette, Tate, De Soto, and Tallahatchie, out of the small number of election officers appointed from the opposition parties over *forty* of them could not read or write, and the three or four of them who claimed to be able to read print, upon being tested were found to be deficient in that. As specimens of these officers thus arbitrarily appointed, read the testimony of Cezar Pegues, on page 69, where he testifies that he is "about sixty-five years of age. One of my eyes is entirely out; the other I cannot see good out of, and I cannot read or write;" and of Seaborn Clark, on page 114, where he says, "I can neither read or write; I cannot hear good out of one ear at all; I got a pin stuck in the drum of my ear."

REGISTRATION OF VOTERS.

The evidence shows that in the four counties of Marshall, De Soto, Panola, and Tallahatchie (all confessedly largely Republican counties), the county commissioners did assemble at the registrar's office some ten days prior to the election, but manifestly not for the purpose of correcting the books "so as to show the names of all the qualified electors of the county," as is the plain language of the statute, but they met there and deliberately stopped the registration of voters in the counties mentioned; and, not satisfied with this, went deliberately to work (for what cause it is not stated) and erased from the poll and registration books the names of nearly 1,000 Republican voters *who had previously registered*, many of whom swear that they had been voting for years at the precincts where they offered to vote at this election, and the fact that their names had been erased from the books was not developed until they came to the polls to vote. This is shown to be the case at some forty precincts in the district. (See pages Record 19, 23, 24, 27, 30, 52, 76, 80, 123, 167, 196, as to closing of registration.)

For evidence of Republicans' names being erased from registration and poll books, and not being permitted to vote in consequence thereof, see Record, page 83, Q. 21; pp. 112, 91, 97, 94, 108, 119, 109, 111, 117, 60, 100, 28, 19, 31, 34, 12, 13, 35, 44, 25, 40, 41, 168, 157, 178, 438, 439, 440, 447, 448, 450, 452, 453, 454, 455, 456, 462, 463, 464.

DE SOTO COUNTY.

Record, p. 24, Q. 5: Witness "Pratt" says State board appointed an ignorant colored man to represent the Republicans, "who is totally ignorant," and not identified with the party, as one of the county election commissioners.

Record, p. 28, Q. 2 and 3: This commissioner says he cannot write or read writing, and knew nothing of the compiling of the returns save what the Democratic members of the board told him.

Record, p. 20, Q. 15: "Howze," Greenbacker, proves that "Johnson," one of the Democratic commissioners, forged a poll-book and caused it to be substituted for holding the election at Depot Box, instead of the poll-book belonging to that precinct (at Hernando).

Record, p. 29, Q. 2: "Dr. W. M. Johnson" says that this election commissioner admitted to him that *he did make the book*.

Record, p. 233, Q. 25: This commissioner says he has no information (except hearsay) as to whether or not he and others are under indictment in the Federal court for the infraction of election laws.

Record, p. 458, Q. 6 and 7: "Howze" says he was present in court, and that this commissioner was present, when his case was continued till July term, 1880.

Record, p. 457, Q. 3: Election commissioners abolish Plumb Point precinct.

Record, p. 21, Q. 19; p. 23, Q. 8; p. 24, Q. 7; p. 27, Q. 6: Ten days prior to the election the registrar refuses to register any more voters, and the books are closed against them for the season. "Nelson" says voters were coming in every day and refused registration.

Record, p. 21, Q. 19: "Howze" says (estimates) that he saw as many as 150 Republicans during that time who told him that they had applied for registration and were refused.

Record, p. 23, Q. 8: "Newsom" says the closing of the registration at that time was a source of general complaint among Republicans from all over the county, who came for that purpose; that there are a large number of voters who generally neglect to register till just prior to election. Witness heard no Democrat complain.

MARSHALL COUNTY.

Record, Q. 3 and 4, p. 336: State board appoints "Wallace," Manning's brother-in-law, as one of the county commissioners.

Record, Q. 4 and 5, p. 338: "Wallace" is shown to have been in the habit of officiating at elections. Claims to have acted but for a short time, but on being pressed (p. 338, last question) admits that he was such *all the campaign*.

Record, Q. 7 to 10, p. 123: "McCorkle," Republican commissioner, shows that Wallace and Hardin, the two Democratic commissioners, held a meeting without advising him of it and forged his name to a circular, under which they abolished two precincts, and changed the location of two others, which was done without his knowledge or consent.

Record, Q. 1 and 2, p. 125: McCorkle shows that he was never out of Holly Springs more than one day at a time at that period. (See circular referred to, p. 124.)

Record, p. 76, Q. 7; p. 80, Q. 5: The county registrar closes the registration books ten days before the election and no voters are permitted to register after that time.

Record, p. 123, Q. 4 and 5: "McCorkle," county commissioner, says that they were always crowded with applications for registration papers during the last few days prior to elections; that 500 or 600 voters generally applied for registration within that period.

Record, p. 80, Q. 7: "Cunningham," on Wednesday before election, says he took down the names of about one hundred who were refused registration, many of whom he accompanied to the registrar for that pur-

pose (that he stayed at the court-house all day for that purpose), at request of Buchanan.

LA FAYETTE COUNTY.

Record, p. 51, Q. 4: "Scruggs" says *State board* appointed ignorant man as Republican representative on board county commissioners over protest of Republicans.

Record, p. 71, re-examination, Q. 1, 2, and 3: Republican commissioner shows that he was appointed at solicitation of Democrats only, and that no Republican recommended him.

Record, p. 211, Q. 9: Shows McGowan to be a man *utterly devoid of character*. McGowan was one of the Democratic commissioners of that county.

Record, p. 60, Q. 1, 2, 3, and 4: McGowan presided as associate notary (deputy chancery clerk) in taking this testimony, *where his own acts was directly the subject of investigation*.

Record, p. 210: "Nunnally" says he would not believe "McGowan" on oath.

Record, p. 70, Q. 2 and 3, 4 and 5: "Jefferson," Republican *commissioner*, says the Democratic commission appointed the inspectors without consulting him and refused to appoint any one recommended by Republicans. Registration of Republicans *avoided* by taking registration books to Democratic meetings and other places. Code Miss., sec. 11 and 12, *requires registration books to be kept at office of circuit clerk and requires all electors desiring to register to come to the court-house (clerk's office)*. The books are part of the records of his office, and are made in a statutory form, *one for each district in the county*, and all persons registering are *required to sign this book*.

Record, p. 52, Q. 6: "Scruggs" says registration books were taken to Democratic speaking at Stoner's Mill *the day that the Republicans had speaking at Oxford*.

Record, p. 307, Q. 10: Contestee's witness "Andrews" says books were taken to Abbeville, College Hill, Alexander's Store, and Free Springs on more than one occasion.

TALLAHATCHIE COUNTY.

Record, p. 187, Q. 5, 6, and 7: "Turner" says *State board* appoints an ignorant man as the Republican representative as county commissioner over protest of Republicans.

Record, pp. 196 and 197, re-examination, Q. 1; cross-examination, Q. 1: "Downy," the Republican commissioner, shows his utter ignorance, and that *he cannot read writing*.

Record, pp. 421 and 422, cross-examination: "Sanders" shows that "McAfee," one of the Democratic commissioners, while acting as such *in 1879, sent the wrong poll-books to several precincts by the Democratic candidates*, and in consequence thereof they held no election at these precincts.

NOTE.—No Republican vote was cast in this county for President or Congressman in 1876, by reason of wholesale destruction of Republican tickets.

Record, p. 414: "London," cross-examination, Q. 1 and 2, on this subject.

Record, p. 421, Q. 2: "Danders," county registrar, *closes the registration of voters five days before election*.

PANOLA COUNTY.

Record, p. 167, Q. 4: "Brown," commissioner, says registrar turned over the registration books to commissioners, for revision, *ten* days before the election, and (Q. 6) says the registrar did no more registering after that time. See Q. 1, cross-examination: Says the commissioners did some registering during that time, but they were only *revising* registration. X Q. 6: Election laws, section 124, only authorize commissioners to register persons *on appeal* (where the *registrar* has refused them registration).

Record, p. 142, Q. 11: "Pipkin" says books were turned over to commissioners ten days before the election, and (p. 143, Q. 12) the board were *transferring names* during that time; that *registrar* helped them register one day.

Record, p. 157, Q. 3, 4, and 5: "Small" says Brown and Ruffin, the *election commissioners*, acted as *inspectors*, and held the election at Sardis precinct; that *neither of them were sicorn as inspectors*; that *Ruffin was a voter at another precinct*. (This is not denied by any witness.)

TATE COUNTY.

Record, p. 173, Q. 3: Republicans have no representative on board of *election commissioners*, but "Jones," Greenbacker, is appointed.

Registration closed as against Republicans.

Record, p. 398, Q. 1 and 2, cross examination: Contestee's witness Clifton says he sent registration books to country precincts by one "Medders," who is editor of the Democratic paper. This was just prior to the election.

Record, p. 401, Q. 2 and 3: "Medders" accompanies "Shauds," *Democratic* "elector," to his appointments all over the county the week preceding the election, thus closing out all persons applying at the *registrar's office* for registration, where the law required the books to be kept and registration to be done, and where the law required all persons to come who desired to register, from all parts of the county.

It is in evidence that "Johnson," one of the Democratic election commissioners for "De Soto" County, was convicted at the last term of the Federal court held at Oxford, Miss., and fined \$500, for fraudulently erasing the names of voters from the registration and poll books of that county at this election (see *transcript* court record filed in case); that all three of the election commissioners for (Panola) county were indicted and *plead guilty*, at the December term, 1880, of the same Federal court, to the charge of refusing to register voters at this election (see *transcript* court record filed in case); that the two Democratic election commissioners for "Marshall County" were indicted and *plead guilty* at the December term of the same court (1880) to the charge of fraudulently erasing names of voters from the poll books of that county (see printed record, page 6).

That C. S. Bowen, an election inspector, was tried and convicted at the same term of this court for ejecting a United States supervisor from the polls in Marshall County; and

That Seaborn Clark and N. Mims, inspectors of election, *plead guilty* to charge of ejecting United States supervisor from the poll in Marshall County at the same term of court. (See printed record, page 6.)

That "Maxwell," the registrar for "De Soto County," is now under indictment in the same court for *registering* voters by *proxy* and for denying registration to one class of voters. (See record transcript filed.)

We here give the evidence of G. C. Chandler, the district attorney for the northern district of Mississippi, showing what seems to your committee a *prevailing* sentiment (in the second Mississippi district and adjoining districts) as to the right of parties to interfere with poll-books, election officers, and ballot-boxes. *The record filed with the committee* shows that a part of these election officers were permitted to plead guilty—"nolo contendere." We can well imagine why a humane judge should be so considerate as to permit *such a plea* to be entered, in view of a Mississippi statute affixing the penalty of *disfranchisement* for offenses of this kind.

The record, pages 382 and 387, shows that the parties from "Marshall" County were defended by *volunteer* and able counsel, who testify that they defended these men *without fee or reward*, because they saw they thought they were being *persecuted*. It is shown that three law firms of the city of Holly Springs tendered their services in the defense of these cases.

Page 5:

G. C. CHANDLER, being sworn according to law, testifies as follows:

Question 1. Where do you reside, and how long have you resided in the State of Mississippi?—Answer. I reside at Corinth, Miss., and I have resided constantly in the State the last forty-five years.

Q. 2. What official position do you now hold under the laws of the United States?—A. I am United States attorney for the northern district of Mississippi.

Q. 3. In your official capacity as district attorney of the United States for the court of the northern district of Mississippi, if to your knowledge there were any indictments found by the grand jury at the December term, 1880, of said court for violations of the election laws of the United States, state how many, for what particular offense, in what counties, and disposition (if any) was made of such cases, together with the names of parties indicted. State fully and particularly.—A. For want of money, and on account of the failure to co-operate with the court on the part of some persons who should have felt an interest in enforcing the law, there was only a very partial investigation of the last Congressional election; but so far as the investigation was carried it showed almost every conceivable crime against the purity of the election. A number of indictments were returned by the grand jury, and I hand you the following account of those where arrests have been made; the others are for the present private.

Q. 4. State, if you know, from your information as district attorney, whether or not there were other violations of the election laws of the United States and laws of the State of Mississippi, in said district, committed at the election in November, 1880; and, if yea, state why the grand jury failed to institute further proceedings. State fully and particularly your knowledge on the subject.—A. The grand jury did not return all the indictments the evidence before them warranted. They examined witnesses only from eight or nine counties, and they were adjourned when the funds to pay witnesses and jurors were exhausted. In many counties the election was conducted fairly, and in others all election laws, State and Federal, were violated. Men of one class were registered illegally, and of another class refused registration. Under the State statute that authorized the revision of the poll-books the names of many legal voters were crossed from the poll-books, and intimidation and obstructing of voters, expelling United States supervisors, false counting, and ballot-box stuffing were all shown by the evidence before the grand jury to have been committed.

List of election cases originated at December term, 1880, of the United States district court for the northern district of Mississippi, where arrests have been made, with disposition of the same.

No. 1765. United States v. M. B. Collins, Warner Matthews, Jos. E. Monroe, commissioners of election for Coahoma County.

Charge.—Failing to return vote of the county—returning the vote of one precinct as the entire vote of the county.

Plea of guilty by each defendant.

1802. Alonzo Gorman, A. G. Hockreoder, William Pounds, Lee County.

Charge.—Obstructing voters at the polls.

Dismissed as to Hockreoder, and jury and verdict of guilty as to Gorman, and not guilty as to Pounds.

1788. E. L. Sykes, sheriff of Monroe County.

Charge.—Threatening witness in election cases.

Jury and not guilty on plea of guilty in case No. 1790, and as the Government had a single witness to the threats.

1789. Jas. Evans, Jack Gathings, Paul Strong, Monroe County.

Obstructing voters at the polls.

Plea of guilty as to Evans and Gathings, and dismissed as to Strong.

1790. E. L. Sykes, sheriff, Monroe County, Ben. Halliday, Jas. E. Sanders, J. Sandy Watkins, Woodson Watson, Jas. Evans, Ben. Bradford, Jack Gathings, Dr. Strewell, inspectors and clerks.

For ejecting United States supervisor from polling place.

Plea of guilty as to Sykes, Jas. Evans, and Jack Gathings, and dismissed as to the others.

1794. G. C. Myers, register, Marshall County, M. G. Hordin, J. C. Boxley, commissioners, Marshall County.

Charge.—Refusing to register voters.

Jury, and verdict of not guilty on entering plea of guilty in case 1795, by Hordin and Boxley, and not guilty as to Myers.

1795. M. G. Hordin, J. C. Boxley, commissioners of election, Marshall County.

Charge.—Fraudulently erasing names of voters from poll-books.

Plea of guilty by each defendant.

1771. C. S. Bowen, jr., Seaborn Clark, Nat. Muris, Dr. Dean, Marshall County election inspectors and clerk.

Charge.—Ejecting from polls United States supervisor.

Jury, and verdict as to Bowen; plea of guilty as to Clark and Muris, and not guilty as to Dean.

1786. George Askew, Dorsey Outlaw, Green Davis, commissioners, Oktibbeha County.

Charge.—Refusing to keep polls open as required by law.

Pending.

1772. C. S. Bowen, jr., Seaborn Clark, Marshall County, inspectors of election.

For failure to keep polls open as required by law.

Jury, and verdict of not guilty on their entering plea of guilty in No. 1771.

1773. T. R. Maxwell, registrar of De Soto County.

Fraudulently refusing to register voters.

Pending.

1775. W. H. Johnston, T. A. Dodson, Anthony Matthews, De Soto County, commissioners of election for De Soto County.

For fraudulently making false poll-book.

Jury, and verdict not guilty.

1774. W. H. Johnston, T. A. Dodson, Anthony Matthews, De Soto County, commissioners of election for De Soto County.

For fraudulently erasing the names of voters from the poll-books.
Pending.

1776. Jas. Brooks, N. Dodds, inspectors of election at Horn Lake, De Soto County,
Stuffing ballot-box.
Pending.

1777. Jas. Brooks, N. Dodds, inspectors of election at Horn Lake, De Soto County.
Refusal to keep polls open.
Pending.

1785. Geo. Askew, Dorsey Outlaw, Green Davis, Jno. Gillmore, Isaac Sessions, Oktibbeha County inspectors and clerks.

Stuffing ballot-box.
Pending.

Having stated the general principles that govern our opinion, we now proceed to give the number of votes cast at the various precincts where frauds are shown to have been committed, and where the election officers were either so corruptly or illegally appointed, or where their acts while holding the election causes such suspicion in our minds as to destroy confidence in the returns. The number of votes there found to be tainted with fraud is so great as to justify the conclusion that the election in this case must be set aside. (For returns see Record, pages 391 and 392.)

MARSHALL COUNTY.

| | |
|-------------------------|-----|
| Chulahoma | 512 |
| Byhalia..... | 514 |
| West Holly Springs..... | 507 |
| East Holly Springs..... | 512 |
| Wall Hill..... | 340 |
| Mount Pleasant..... | 396 |
| Waterford..... | 192 |
| Hudsonville | 273 |

3,246

DE SOTO COUNTY.

| | |
|---------------------------|-----|
| Horn Lake..... | 335 |
| Hernando Court-House..... | 166 |
| Olive Branch..... | 186 |
| Oak Grove..... | 229 |
| Hernando Depot | 299 |
| Lauderdale..... | 145 |
| Pleasant Hill..... | 244 |
| Love Station..... | 233 |
| Nesbitt Station..... | 247 |
| Lewisberg | 158 |
| Endorn | 240 |
| Lake Cormorant..... | 192 |
| Cochran precinct..... | 211 |

2,885

LA FAYETTE COUNTY.

| | |
|---------------------|-------|
| College Hill..... | 410 |
| Oxford..... | 1,110 |
| Taylor's Depot..... | 349 |
| Abbeville | 351 |

3,2

PANOLA COUNTY.

| | |
|----------------------|-------|
| Sardis | 624 |
| Como | 748 |
| Longtown | 265 |
| Pleasant Grove | 323 |
| Springport | 133 |
| | 2,093 |

TATE COUNTY.

| | |
|--------------------|-----|
| Arkabutla | 183 |
| Independence | 326 |
| Senatobia | 462 |
| | 971 |

TALLAHATCHIE COUNTY.

| | |
|---|--------|
| Charleston * (county seat), estimated | 300 |
| | 300 |
| Total | 11,715 |

In making the foregoing statement we have not included the vote of many precincts where good grounds exist for their rejection, and where the election might be declared void upon the evidence, as at Law's Hill, Oak Grove, Bainsville, Evans School-house, in Marshall County; Springdale, Sanders' Store, Free Springs, and Dallas precincts, in La Fayette County; Stewarts, Reynolds, and Ingram's Mill, in De Soto County; Ross Mill and Brooklyn, in Tallahatchie County. The evidence of witnesses in relation to these precincts shows such irregularities as, when considered in connection with the evidence generally, leads to the belief that there was unfairness intended, if not openly practiced.

Were we to adopt the rule laid down in *Donnelly vs. Washburn* we would reject them all.

We have selected the precincts (where the figures are given) because at every one of them some transparent fraud is directly proven, or the conduct of the election officers has been such as to so becloud them with suspicion that they are, in our judgment (when considered in connection with the conduct of this whole election), unworthy to be considered as election returns.

VALOBUSHA COUNTY.

As to the condition of affairs that prevailed in this county, we here submit the evidence of A. T. Wimberly, chairman of the Greenback State executive committee. The returns from this county (page 392) give contestant only 81 votes, while contestee has 1,120 votes, while the census (p. 293) shows there to be some 1,540 *colored* voters in the county. It does not seem from this evidence that those who deemed it necessary to carry the election "*at all hazards*" were either respecters of *persons* or *political parties*, or were at all choice in their methods of bringing about the result, and we can easily conceive how timid colored voters would shrink from contact with such a state of *war*, and either stay away from the polls or seek refuge in the *protection* afforded by the Greenbackers and vote their ticket, if necessary to that end.

* The vote of this county is not returned by precincts.

A. T. WIMBERLY, being legally sworn, testified:

Question 1. Where do you now reside; where on the 2d November, 1880; how long have you resided where you now reside, and what are your politics?—Answer. On 2d November, 1880, I resided in Coffeeville, Yalobusha County, Miss., and have resided there since 1868. I am a Greenbacker in politics, and have lived in this district all my life.

Q. 2. What official position do you hold in your party in Mississippi, and what in the political canvass of 1880, and what is the extent of your acquaintance with the Greenback organization in this second Congressional district?—A. I am chairman of the Greenback State executive committee, and was in 1880. From my correspondence as such chairman, and my association with the party in convention and otherwise, I am very well acquainted with my party organization in the district.

Q. 3. What part did you take in the interests of T. W. Harris, your Greenback candidate for Congress, in 1880?—A. I not only canvassed Yalobusha County in his behalf, but also La Fayette, and personally spent my time in the canvass of those counties and by correspondence with Greenbackers all over the district during the canvass; worked in his behalf. I spent my time, my money, and run the risk of losing my life in that canvass for him.

Q. 4. What sort of canvass did the Greenbackers make as to vigor and aggressiveness in this the second Congressional district in the Congressional election of 1880?—A. From my personal observation and correspondence in the district, I think they could not have made a more thorough canvass than they did. They directed their time and energy and what little money they had for the success of their candidates. T. W. Harris, our candidate for Congress, made a thorough canvass of the entire district.

Q. 5. What was the character of your canvass in person for peaceableness and quietness? If any violence was done towards you or the members of your party, state fully and particularly all you may know on this point.—A. The canvass was anything else but a peaceable one, from the beginning to the end. At every political meeting held in Yalobusha County, where there was a joint discussion between the Greenbackers and Democrats, the Democrats never failed to go armed not only on their own persons, but there was a committee of boys appointed to carry arms in saddle-bags to be used should it be necessary. That forced us to carry ours to defend ourselves with, and we were not inclined to be bulldozed and run off the track by the Democratic mob. In Coffeeville, some time in the month of July or August, the Democrats advertised to have a ratification meeting. We were invited by one of their committee to have a joint discussion. We accepted the invitation, and after we had sent out runners for our crowd to come to the speaking on the following Saturday, the chairman of the Democratic committee, late Friday evening, about sunset, notified me as a member of our committee that they would not permit any discussion on the following Saturday, when it was too late for our committee to give notice to our people. On Saturday morning, after the crowd had gathered in on both sides, I went to the chairman of the Democratic committee and said to him that as there was a misunderstanding, or rather a refusal on their part to grant a division of time, we would have a speaking of our own, but that as it was their appointment we would let them take choice between the grove and the court-house as to where they should hold their meeting. He notified me that they would hold their meeting in the grove. I at once started a little negro boy up the street ringing a bell to notify the Greenbackers that we would hold our meeting in the court-house. Two or three Democrats stopped him and forbid him ringing the bell. Just after our meeting adjourned I discovered the Democratic crowd from the grove making way up the street leading to the court-house, using very insulting language against the Greenbackers. We passed them, and when we dispersed at the depot five or six of the Democrats commenced firing on Mr. Pierson, a Greenbacker, and other Greenbackers, swearing that if they couldn't beat us voting they would kill us. This shooting resulted in the wounding of Mr. Pierson and some half dozen others, both Greenbackers and Democrats. On the following Monday a mob of some 300 Democrats came to Coffeeville and sent a committee to me a second time to say that unless I renounced my political principles I would be a dead man before midnight. I did not comply with their demand, nor did they put their threat into execution.

Q. 6. State the character for intelligence of the Greenback white voters of the district.—A. They are of the very best material of the merchants and farmers of the district; also lawyers and doctors.

Q. 7. What is the Greenback white vote of Yalobusha County? State as near as you can estimate.—A. The Greenback white vote of Yalobusha County is between 500 and 700 voters.

Q. 8. From what counties did Colonel Harris, candidate for Congress, chiefly receive his vote from among the colored voters given at that election?—A. Colonel Harris received what colored votes he did receive at last election from among the colored voters in Yalobusha and Panola Counties.

Cross-examined :

X Q. 1. Did not nearly all of the colored people of Yalobusha County vote for T. W. Harris, November 2, 1880, for Congressman?—A. Between five and seven hundred voted for him.

X Q. 2. Did he not receive a considerable colored vote in Panola County?—A. From the returns and all the information I have, he did.

X Q. 3. Did you not have a fair election and a fair count in Yalobusha County?—A. So far as I know we did; we made them give it to us.

X Q. 4. Do you know T. J. Settle, of Panola County, and is he not a prominent and leading Republican politician, and is he not of the colored race?—A. Yes, sir.

X Q. 5. Are you not chancery clerk of Yalobusha County?—A. I am.

A. T. WIMBERLY.

Your committee would hesitate to reject the vote of any one county upon the evidence of a single witness, but the exceptionally high character of the witness, and the most extraordinary state of affairs shown to have existed by his proof, and as is shown by his *returns* on page 329, strongly incline us to the opinion that it should be rejected.

FAILURE OF CLERKS OF ELECTION TO KEEP LISTS OF VOTERS.

The willful refusal of the clerks of election to make two lists of the voters by name, as they voted (and as is required by section 136, Miss. Laws), after having been shown the law by supervisors (Evidence, pp. 38, 40, 42, 63, 110, 135, 159, 163, 165, 166, 170, and 374), is a very suspicious circumstance in connection with this election. It is through these lists that stuffing ballot-boxes can be easily detected; or if persons are permitted to vote who are not entitled to vote, it will appear by these lists; and your committee does not forget that in the case of Lynch *vs.* Chalmers the evidence shows that at some of the precincts in the 6th Mississippi district the county canvassing board rejected the returns and refused to count the vote because the clerks had failed to return the lists of voters with the ballot-boxes.

CHANGE OF POLLING PLACES.

There is evidence tending to establish the fact that some of the voting places were changed just prior to the election, and that much confusion was thereby caused among the voters. Many of them were not aware of the change, and in some instances they did not know where the new polling places were established. Just how far this affected the result of the election we are unable to tell from the evidence. We can, however, readily imagine how a resort to changing the polling places just before an election in a county would cause such confusion and unfairness as would defeat the popular expression of the will of the people through the ballot-box. (P. 123, Q. 7 to 10; p. 457, Q. 3 to 5; p. 231, X Q. 12.)

The report made by the chairman of this committee in the case under consideration uses the following language:

ILLITERATE ELECTION OFFICERS.

There is no doubt in our minds, from the evidence in this case, that many of the Republican precinct inspectors were appointed as such because they could neither read nor write. This is, in our judgment, a clear abuse of the law, and without the supervisor's law, which enables the opposing party to have men of their own selection to guard the polls as supervisors, we would be strongly inclined to apply a corrective for this manifest abuse of power.

With tickets exactly similar in all respects, or as nearly so as they can be printed, and on the same kind of paper, it would not be a hard task for election officers, if

they were so disposed, to cheat an illiterate man, who could neither read nor write, both in the vote and in the count. All good people ought to discountenance and cry down evil practices of this kind. We indulge the hope that it will not be repeated in the future.

We concur with the chairman in his opinion of the abuse, but we differ from him in believing that the presence of the United States supervisors in any way palliated the offense, or took away the necessity for the application of the proper correction, and while we join in his *hope* "that it will not be repeated in future," we think the best method of securing the fulfillment of that hope is to take from the conspirators the fruits of their ungodly work, and we cannot agree with him in the statement of the report as follows:

DONNELLY-WASHBURN CASE.

We are not willing to go as far in this case as the majority of the committee did in the Forty-sixth Congress in the case of Donnelly vs. Washburn. It was there held—

"The very fact that in these *seven* precincts Mr. Donnelly had been *deprived* by the city council of Minneapolis of *all representation among the officers conducting the election* is, in itself, a *very strong proof of conspiracy and fraud*."

We concur in opinion with the majority in this case *upon this point*, because in the case before us there is so much *additional* evidence of like character, shown at some forty precincts, to justify the opinion that a conspiracy existed.

In Donnelly vs. Washburn, Forty-sixth Congress, report No. 1791, page 25, the committee reject the vote of a whole county because the vote of the county was canvassed *by the county auditor, one justice of the peace, and judge of probate*, while the law required the vote to be canvassed *by the county auditor and two justices of the peace*.

Held, that the probate judge being *ineligible* under the law, the vote must be rejected.

Authorities cited: Howard vs. Cooper, Thirty-sixth Congress; Jackson vs. Wayne (Clark & Hall's Report, p. 41); Easton vs. Scott, p. 272; Sloan vs. Rawls, cases 1871 to 1876, p. 144; Delano vs. Morgan, 2 Bartlett, p. 171; Howard vs. Cooper, cases 1864 to 1865, p. 282; Morgan vs. Delano. In Donnelly vs. Washburn the committee say:

It must be remembered that in the cases cited, as decided by former Congresses, the votes of townships were cast out, *because the boards of election, judge, or the clerks thereof, were not constituted according to law*. This being the law as to mere present officers, how much more strongly does the principle apply to the case of a canvassing board of a county where the votes (not of one precinct alone) but of all the precincts of the county are involved. * * * How important, then, does it become that the county board of canvassers shall be constituted in strict conformity with law, and that no ~~comp~~ ~~ors~~ shall be permitted to intrude into and control its deliberations.

We only refer to the foregoing cases to show the action of former Congresses, and not for the purpose of deciding this case on rule laid down.

We think the evidence in this case so clearly establishes a *conspiracy* to defraud the electors of that district of their votes, and through which, as the proof shows, very many thousands were so defrauded, that we are entirely safe in basing our conclusion upon *this ground* alone. In addition to the figures we have already presented by precincts, there can be no doubt from the evidence that the registration was *designedly* stopped by contestee's friends, and for the purpose of preventing the friends of contestant from registering just prior to the election, and that thousands of contestant's friends were thereby deprived from registering; and the proof also shows that hundreds of (Republican) voters *who had previously registered* were not permitted to vote because their names had been

arbitrarily or fraudulently erased from the poll-books of their respective precincts by the commissioners of elections, which fact was not discovered until these voters came to the polls to vote.

In brief submitted by counsel for contestee it is argued in justification of the numerous adjournments and carrying away of the ballot-boxes, that such conduct was authorized by the following clause in the law of Mississippi, revised code, 1880, section 126:

If an adjournment shall take place after the opening of the polls, and before all the votes shall be counted, the box shall be securely closed and locked, so as to prevent the admission of anything into it during the term of adjournment, and the box shall be kept by one of the inspectors, and the key by another; and the inspector having the box shall carefully keep it, and neither unlock it nor open it himself, nor permit it to be done, nor permit any person to have access to it during the time of such adjournment.

It is very evident to the minds of your committee that the lawmakers of Mississippi intended that *when the election opened at nine o'clock, it should be kept open until six o'clock in the evening, and that the vote should be immediately counted and returns made*, as is plainly set out in the language of the statute, section 136, embraced in this report. We can easily imagine a necessity for the adjournment of an election in case of riot, storm, or other abnormal conditions, which would be justified by section 126, but not otherwise.

VOTE OF THE DISTRICT AT FORMER ELECTIONS.

There is but little evidence on this point. All the records filed with the committee tend to show that the second district is a *Republican* district; they show that General Grant carried the counties comprising this district by a majority of 2,625 votes in the Presidential election of 1872.

That in 1873 the regular Republican candidate for governor carried the counties comprising this district by a majority of 1,570.

That in 1873 the CONTESTANT in this case carried the county of *Marshall* by a majority of 1,304, while returns filed in this contest *from this county give a majority for contestee*.

It is developed by the proof in this case that a great majority of the votes cast for *Harris*, the *Greenback candidate for Congress at this election*, were cast by *white* voters who, in the years 1872, 1873, and 1874, *belonged to the Democratic party*, and we are unable to conceive how (under ordinary circumstances) it was possible for the district to be Democratic in the last (*Presidential*) election, and we can only account for it by the methods so clearly proven and heretofore set out.

We hold it to be true that when public officers are shown to be corrupt *men* their acts as officers are not entitled to the same presumption of fairness extended to officers of unimpeachable character, and to show the character of many of the Democratic county *commissioners of election* and the *ignorance* of the Republican commissioners we have given extensive quotations from the evidence.

Having pointed to the proof of, and which we consider the strongest possible circumstantial evidence of, a conspiracy to stuff the ballot-boxes in this district, we now call attention to the conduct of the officers *holding the election itself*, and we submit herewith a brief summary of the testimony, with references to the pages of the record where it is to be found, showing frauds as barefaced as ever disgraced the election of any State.

From the open and defiant firing of cannon into Republican voters at Oxford to drive timid voters from the polls, the bullying of gray-haired

men who were United States supervisors, as at Horn Lake, by youthful desperadoes with five-shooters, down to the substitution of ballots as they were put into the box, as at Byhalia, and the fraudulent tally-list as at Holly Springs, every possible scheme and device by which ballots can be stolen or falsely counted is found to have been practiced.

Section 136, code of Mississippi, 1880, is in the following words:

All elections by the people of this State shall be by ballot. The poll shall be opened at nine o'clock in the morning, and be kept open until six o'clock in the evening, and no longer; and every person entitled to vote shall deliver to one of the inspectors, in the presence of the others, a ticket or scroll of paper, on which shall be written or printed the names of the persons for whom he intends to vote, which ticket shall be put in the ballot-box, and at the same time the clerks shall take down on separate lists the name of every person voting; and when the election shall be closed, the inspector shall publicly open the box and number the ballots, at the same time reading aloud the names of the persons voted for, which shall be taken down by said clerks in the presence of the inspectors, and if there should be two or more tickets rolled up together, or if any ticket shall contain the names of more persons for any office than such elector had a right to vote for, such ballot shall not be counted.

The law clearly required that when the election begins in the morning the work shall go continuously on until the votes are all counted, and the returns made out and signed.

BRIEF OF EVIDENCE BY PRECINCTS.

Marshall County, Chulahoma Precinct.

"Cunningham," page 79: Was appointed United States supervisor, and was not permitted to act, and compelled to leave the room; remained outside and kept tally of Republican votes, they voting open tickets. Three hundred and thirty-six Republicans offered to vote, of whom 35 were rejected because their names were not on the poll-book. Witness knew most all of them personally, and they lived in that voting precinct. Witness kept number of white voters, there being one hundred and sixty.

Polls adjourned one hour for dinner, leaving the box in the room—no one in charge. Also adjourned when polls closed for supper, leaving no one with the box. Vote counted in secret. Witness was raised in that neighborhood. (See diagram, page 82.) Returns on page 391 show Democratic vote 241; Republican vote 271.

"Wilkins," p. 118: Corroborates above, as far as he goes.

"Clark," p. 114: Corroborates above, as far as he goes.

Contestee's witnesses.—"Hancock," p. 369: Was invited in to witness the count after fifty tallies had been counted. Did not see anything wrong after that time.

"Mimes," p. 339, and "McKee," p. 343, saw nothing wrong at the polling and count of votes, and say election was fair.

Byhalia Precinct.

"Hardy," supervisor, p. 97: Was supervisor; when vote was being polled detected Inspector Flow exchanging ticket.

When vote was being counted detected same officer several times taking tickets out of the box, and putting in other tickets. Twenty-nine persons were refused a vote, nearly all Republicans, most of whom witness personally knew as living in that precinct. Witness files list of these, page 98. Republicans spoken of voted open tickets. Polls adjourned for supper.

Contestee's witnesses.—"Watson," p. 370: Supervisor; did not discover anything wrong.

West Holly Springs.

"Benton," p. 75: Was United States supervisor. Polls were opened and voting continued till 6 p. m. Witness then desired the vote counted, but inspectors refused, and adjourned for supper. Democratic inspector McKinney went out and came back, stating that he had consulted Colonel Manning (contestee) and General Featherstone (chairman Democratic executive committee), and upon their advice they adjourned for supper. After supper the count was proceeded with, the door being locked, and no one admitted save the election officers. Ballots were all passed to witness, which he counted carefully, and also kept tally of same. Witness's tal'y-list showed that there were 50 *more votes cast for Buchanan* than the clerks had put on their tally-list, and called attention to the fact, but they failed to take any measures to correct it. Republican inspector refused to sign the returns. There were 40 or 50 colored Republicans refused a vote, chiefly because their names were not on poll-book. No white man was so refused on any account. These men claim to have been duly registered. Witness knew most of them as citizens of that election district.

"Guyton," Republican inspector, p. 121: Corroborates foregoing witness as far as he goes, and was importuned and threatened to sign the returns, but never did sign them. Republican inspector at this precinct could *neither read nor write*.

Contestee's witnesses.—"Walters," p. 357: Says witness Benton did call the attention of election officers to the discrepancy mentioned in his testimony.

"McKinney," Democratic inspector referred to in witness Benton's testimony, is examined, and *does not deny* that Manning and Featherstone advised them that they could adjourn for supper, but saw nothing wrong.

"McGowan," p. 352: Thinks the election entirely fair.

"Williamson," p. 356: Concurs in the opinion of witness McGowan.

East Holly Springs.

"Wilkinson," p. 91: Was supervisor. Kept tally-list of all persons voting that day; tally-list was tampered with just as polls closed. Two of election officers were brothers-in-law to contestee, one of whom had been one of the *county election commissioners* till a short time before; door was locked and public excluded when vote was counted; no one permitted present except election officers. About 30 persons, mostly colored (most of whom were known to witness as belonging to that election district), were refused a vote; all claimed to have been registered, but names were not on poll-book. There were sixty more ballots counted out of the box than there were persons voting; witness watched polling and counting of votes "as close as hawk ever watched a chicken." See diagram, p. 94; Republican inspector at this precinct could neither read nor write.

"Harris," p. 222: As to high character of witness Wilkinson.

Contestee's witnesses.—J. R. Wallace, p. 355; M. F. Wallace, p. 336; McGowan, p. 350; McCarroll, p. 344: Two of the foregoing officers at this precinct were brothers-in-law to the contestee. None of these witnesses discovered anything wrong, and say the election was fair.

Wall Hill Precinct.

"Jameson," supervisor, p. 94: "No list of voters was kept;" adjourned three-quarters of an hour for dinner; 27 colored Republicans

applied to and could not vote, names not being on poll-book ; witness knew some 15 of them ; Republican inspector could not read and write. Contestee introduces no witnesses this precinct.

Lams Hill Precinct.

"Austin," p. 126 : Twelve persons were refused vote because names were not on poll-book. All colored but two. Witness knew that some of them resided in that election district.

"McGhee," p. 108 : About the same as the above. Republican inspector could not read and write.

No witnesses for contestee at this box.

Oak Grove Precinct.

"Wells," p. 109 : Five Republicans (voters of this district) refused vote because their names were not on poll-book. Republican inspector could not read or write.

Mount Pleasant Precinct.

"Mull," p. 109 : Was supervisor. Was tax-collector that district for ten years. Clerks refused to keep list of voters, after witness showed them the law requiring it to be kept. Some 15 whites were permitted to vote whom witness did not know. Fourteen blacks and three whites were not permitted to vote ; they were registered voters, but names did not appear on the poll-book.

"Albright," p. 119 : Witness was inspector, and came to Holly Springs after box and poll-book ; box was delivered to him, but no poll-book was in it ; poll-book was brought to precinct morning of election by one Walker, a prominent Democratic politician of that precinct ; 17 persons were refused a vote ; Republican inspector could not read and write.

Contestee's witnesses.—"Bassett," p. 375 ; "Howse," p. 372 ; "House," p. 372 : Thought the election was fair.

Early Grove.

"Briggs," p. 111 : Supervisor ; seven Republicans refused vote ; names not on book.

Contestee no witness at this box.

Waterford Precinct.

"Lacey," p. 112 : Was supervisor ; twenty-nine persons refused vote ; names not on poll-book ; witness knew them all as residents of that election district ; some nine of them went to Holly Springs and procured certificates of their having been registered from the county registrar, and came back and presented them to the officers of election but were not then permitted to vote.

"McKenney," p. 125 : Adjourned for dinner and box left in room no one with it ; Republican inspector could not read and write.

Contestee has no witness at this precinct.

Hudsonville Precinct.

"Boxley," p. 115 : Inspector. When polls closed all persons were

ordered out of room save election officers; Gray and Selby, intelligent Republicans, asked permission to remain, but were ordered out, and the vote counted in secret. It will be observed that this inspector was the only person opposed to Democrats who was permitted to be there, and he could neither read nor write.

Contestee's witnesses:—"Gibbons," p. 348; "Mahon," p. 388: Discovered nothing wrong at this precinct, and say election was fair.

Evans's Schoolhouse Precinct.

"Pegnes," p. 116: Some five Republicans were refused a vote who claimed to be registered; their names not on poll-book; was a general turn-out; Republican inspector could neither read nor write.

Contestee no witnesses at this box.

Bainesville Precinct.

"Carrington," p. 117: Fourteen Republicans and two Democrats were refused a vote; names not on poll-book; all claim to be registered, many of whom witnesses knew as citizens of that election district; Republican inspector could neither read nor write.

No witnesses for contestee.

DE SOTO COUNTY.

Horn Lake Precinct.

"Davis," p. 31: Supervisor. Polls opened one-quarter before 10 o'clock. Adjourned from one-quarter before 1 till 2 o'clock.. After closing of polls box was taken by "Brooks," Democratic inspector. Witness "don't know where to." Brooks remarking, "By God, this belongs to me tonight." "It was dark and rainy." Witness went to the residence of one Holliday, and in about three-quarters of an hour saw Brooks and Dodge, Democratic inspectors, come in with the box. When box was opened *all the tickets on top appeared to be Democratic tickets except five.* There was much confusion, officers and bystanders preventing witness from seeing the box. Two Greenback tickets thrown out and not counted. About 35 Republicans were refused a vote because their names were not on the poll-book. From time-wasting questions, closing polls at noon, and other delays, between 75 and 100 Republicans went home without voting. There were also 32 Republicans waiting to vote when polls closed, and did not get to vote. Witness was cursed and abused, and threatened with pistol by one Douglass during count of vote. There was a large turn-out of voters.

"Turner," p. 33: Inspector. Corroborates much of "Davis's testimony; says box was not sealed when Brooks took charge of it. Witness could not read or write.

"McCain," p. 464: Says adjourned about one hour. Corroborates last witness.

Contestee's witnesses for this precinct are "Bowie," p. 248; "Clinton," p. 249; "Foster," p. 256; "Shaw," p. 259; "Halbert," p. 276; "Woolbridge," p. 280. These witnesses contradict contestant's witness (Davis), and testify that they saw nothing wrong at the election or count.

Hernando Court-House.

"Dockery," p. 28: Republican inspector. Could neither read nor write. Knows nothing of result of election save what others told him. Polls adjourned for dinner, and one hour for supper. During adjournment box was placed in room, and no one with it. Witness wanted to stay with box, but officers insisted that no one should remain. Box was not sealed. A number of *voters of long standing* at the box did not get to vote, names not being on the poll-book. Large turn-out of Republicans.

"Pratt," p. 25, Q. 9: A large number of Republicans could not vote at the box because their names were not on book. They were voters of long standing at the box. A large turn-out.

"Bell," p. 29, Qs. 5 and 6: Distributed Republican tickets at the box; thinks 35 or 40 Republicans were refused a vote; names not on the poll-book. Q. 4: Was a general turn-out of voters. Republican inspector could neither read or write.

Contestee's only witness at the box. "Dockery," p. 287, corroborates much of above statement.

Olive Branch Precinct.

"Hayne," p. 35: Was inspector. Between 60 and 70 Republicans were refused a vote, because their names were not on the poll-book; also, quite a number of others left, saying, "It was no use trying to vote as so many had been refused." Was a general and full turn-out.

"Haynie," (Greenbacker), p. 34: Was supervisor; says there were 56 Republicans who applied and were refused a vote, their names not being on the book.

"Wood," p. 445, Q. 4-5-6: Was president of the Republican club. Republicans more interested than they had been for five or six years. Saw Republicans refused a vote all day. Witness was refused there, and voted there ever since he was free, but could not vote; name not on book this election.

Contestee's witnesses.—"Pleasants," p. 267: "Blecker," p. 264: Does not contradict evidence of contestant's witnesses.

Oak Grove.

"Clay," p. 25: Supervisor; polls adjourned one hour for dinner. When polls closed, Nall, Democratic inspector, took the box to his house, $1\frac{1}{2}$ miles off, being accompanied by one Kirkland. When witness found box it was in possession of one Weiswaer, none of whom were election inspectors, in a room with the door locked. They refused on first application to let witness in room, but finally let him in. The vote was not counted till about ten o'clock. Seventeen Republicans did not get to vote; names not on book. General turn-out of voters.

"Harris," p. 45: Inspector; same testimony, and adds, the vote was counted in private. A number of Republicans did not get to vote. General turn out. Republican inspector could not read or write.

Contestee's witnesses.—"Jones," p. 274; "Kirkland," p. 246: Admit the box was not sealed, but a piece of paper tacked over the whole. That Clay, supervisor, objected to taking box to Nall's house; but neither of them thinks that there was any unfairness in the election.

Hernando Depot Precinct.

"Howze," p. 20, Q. 13 to 16: Supervisor. Polls opened 20 minutes before 10 o'clock. Poll-book used was a forgery, made by Johnson, Democratic commissioner; 28 colored Republicans were refused a vote, names not on books. Vote not counted in public. Officers only permitted to be present.

"Newson," p. 230, Q. 9; "Boone," p. 36, Q. 3: Same.

"Watson," p. 440: Could not vote; marked dead on poll-book.

Contestee's witnesses.—"Johnson," p. 253; "Payne," p. 283: Think election fair.

Reynolds's Store.

"Jones," Greenbacker, p. 35: Knows every voter in the district; turn-out of voters larger than usual; kept list of 9 Republicans not permitted to vote; adjourned one hour for dinner; has full and particular list of every man who voted Democratic ticket, and only 38 so voted; but returns show 57 Democratic voters.

"Durham," inspector, p. 43: Eleven persons refused a vote; witness did not get to vote, names not being on poll-book; witness never saw or signed any returns; Republican inspector could not read or write.

Contestee's witnesses.—"Boyce," p. 238; "Myers," p. 288: Says, X Q. 11, that Durham, Republican, signed returns by making his mark, and X Q. 12, "I saw all the officers sign the returns," while Durham testifies he never did sign them.

Lauderdale Precinct.

"Boggan," Greenbacker, p. 36: Supervisor. Polls were closed one hour for dinner. Box not sealed, and left in room with no one present, and same was done at adjournment for supper. General vote turned out.

"Williams," p. 46: Same testimony, and that some voters' names could not be found on book; was a full turn-out of Republican voters; Republican inspector could not read or write.

Contestee's witnesses.—"Laughter," p. 234: Corroborates above (substantially). Knows of no colored men voting Democratic ticket at his box, and that none but officers of election were present at count of vote.

Pleasant Hill Precinct.

"Todd," Greenbacker, p. 37: Supervisor. Was appointed supervisor, but did not serve on account of threats and exhibition of brass knucks. Democratic friends advised him to leave; was busy all day distributing tickets.

"Dockery," p. 44: Says there were at least 75 colored voters who tendered Republican tickets and were not allowed to vote, their names not being on the poll-book.

"Langlin," p. 455: Was president of Republican club. Knew the Republican voters who were refused a vote; could not see the box, nor votes put in box; might have seen them "if I had had a ladder about six feet high." Witness was there all day; shows that Dr. Gray permitted only one man to vote by making affidavit, and refused balance. Republican inspector could not read or write.

Contestee's witnesses.—“Dr. Gray,” p. 268: Admits that many Republicans did not get to vote; knows of two colored men voting Democratic tickets, but thinks the election was fair.

Stewart's Precinct.

“Albritton,” p. 39: Supervisor. No list of voters was kept; about ten persons did not get to vote—names not on books—and ten other Republicans who did not say (whether or not) they had duly registered and were not permitted to vote. No white man was refused a vote.

“Scott,” p. 12: Republican inspector; could not read or write, and does *not know* anything about the result.

No witnesses examined by contestee for this box.

Lore's Station Precinct.

“East,” p. 40: Greenback supervisor. Adjourned one hour for dinner. Box carried to Love's residence, some distance from polling place; he did not go with it; no list of voters was kept. Fifteen persons (mostly colored) refused vote; names not on book.

“Thomas,” p. 13: Does not know whether returns were correct or not.

“East,” p. 452, X Q. 13: Thinks keyhole to box was not sealed at adjournment for dinner.

Contestee's witnesses.—“Henderson,” p. 263: Corroborates witness East to some extent, and does not think the box was tampered with.

Nesbitt's Station.

“Bullard,” p. 40: Thirty-four persons, including one white man, did not get to vote, names not being on poll-book. There was a general turnout.

“Robinson,” p. 43: Adjourned one hour for dinner and two hours for supper. Box at dinner was placed in care of one Bullard, not an officer of election. Box at supper was given in charge to Bullard and taken to dwelling for supper. Twenty-five or thirty Republicans who did not get to vote, names not being on poll-book. Republican inspector could not read or write.

Contestee's witnesses.—“Bullard,” p. 295: Was not an officer of election. Box left in his charge at dinner for about an hour. Only knew of three colored men who did not go out to vote. Adjourned two hours for supper, when he took box, unsealed, to Marron's residence; left box in room, no one with it (in room adjoining dining-room), while eating supper. Witness *helped the officers to count the vote.*

Louisberg Precinct.

“Bailey,” Greenbacker, p. 41: Supervisor. Polls opened about 20 minutes after 9 o'clock; adjourned one hour for dinner and one hour for supper. Witness objected to these adjournments, but was overruled. About 12 persons could not vote because their names were not on poll-book.

“Clifton,” Greenbacker, p. 42: No list of voters was kept. Was a pretty full turnout of voters. Adjourned for about an hour at noon and also an hour at supper.

“Clayton,” p. 47: Corroborates above witness, and adds: At noon

adjourned. Box was taken to the residence of one Lauderdale, and at supper by Democratic Supervisor Bailey to Louis's residence. Was good turn-out of Republicans. Only officers of election were admitted at the count of the vote.

Contestee's witnesses.—"S. J. Dickey," p. 236: Republican inspector; could not write or read.

Eudora Precinct.

"Buchanan," p. 46: Polls were adjourned one hour for dinner, and box was abandoned in room near polling place, none of the officers remaining with it; adjourned for supper, officers taking box with them, and counted vote near where the election was held. Republican inspector could not read or write.

Contestee's witness.—"Harral," p. 248: Corroborates above witness generally, but thinks election was fair.

Ingram's Mills.

"Morton," Democratic inspector, p. 41: No list of voters kept; adjourned one hour at noon, and also at close of polls; box being left at adjournment in keeping of one of the clerks and one supervisor. None of the election officers were Republican.

Contestee's witnesses.—"Morton," p. 283; "Kerby," p. 243.

Lake Cormorant Precinct.

"McDowell," p. 10: Adjourned for supper, and box was taken to Wither's residence, *about a mile* off, and vote there counted.

"Butler," p. 11: Got to Wither's house before six o'clock; got our suppers and then counted the vote. There were some names, Republicans, on the poll-book *marked mored from the district*, but they were allowed to vote; Republican inspector could not read or write.

Cockrum Precinct.

"Gray," p. 15: Adjourned for dinner one hour; adjourned for supper an hour; box during these adjournments was taken to residence of one Baker, and left there in bed-room with no one in charge of it. No person was allowed to witness the count except election officers. Republican inspector could not read or write.

Contestee introduced no witnesses from this box.

LA FAYETTE COUNTY.

College Hill Precinct.

"Stockard": Supervisor. No list of voters kept. Adjourned for one hour when polls closed, which was opposed by witness. The ballot-box during the time was left in the room where the election was held, and no one was left with it. The door was locked by one Quarles (not an election officer), who took the key. There were two doors to the election room (of store-house). The candle was left burning when they left the room. Quarles came back and requested witness to go back into the election-room with him, which he did, and Quarles *blew the light out as they came out*. In about ten minutes witness observed another light

burning in the election-room, which burned but a short time. There was a large turn-out of Republican voters—is a large Republican box. The witness could not see in room where box was during adjournment. The key-hole to box was not sealed during the adjournment. Nine or ten persons were refused a vote; names not on the poll-book (one white man among them).

“Buford,” p. 265: Corroborates the above as far as he goes. The Republican inspector could not read or write.

Contestee's witness.—“Matthews,” p. 316; “Luckie,” p. 318: All say the election was fairly conducted.

North Oxford Precinct.

The Republican inspector could not read or write.

“Lolt,” p. 57: There was a large turn-out of Republicans. The cannon shooting bursted the plastering over our heads, and it fell on witness, cutting his face. The election was in consequence temporarily suspended, and the Republican supervisor was greatly alarmed.

Witnesses Scraggs, p. 51, and Fitzhugh, p. 55, as to the terrible effect of cannon shooting into voters; also Nunnally, p. 210, who met crowds of voters going home.

Contestee's witness.—“Butler,” p. 303.

South Oxford Precinct.

“Kenneday,” p. 59: There was an adjournment for about a half hour at the close of polls, and the box was placed in chancery clerk’s office.

“Hamblet,” supervisor, p. 60: Adjourned at 6 o’clock for an hour, and the box was put in the vault in chancery clerk’s office, and Brown, chancery clerk, had key to office. About 30 persons were refused a vote, their names not being on books. They were mostly Republicans. Witness protested against adjournment. Republican inspector could not read or write.

Taylor’s Depot Precinct.

“Tyson,” p. 66, Republican inspector: Adjourned for one hour at dinner, and along in the evening adjourned again for an hour; then opened the polls again for 30 or 40 minutes, when polls were closed, it being then 6 o’clock. The box remained in possession of witness during the adjournment; vote was counted with closed doors, and no one was allowed to be present except the election officers.

The Republican inspector could not read or write.

Springdale Precinct.

“Weathersby,” p. 67: Adjourned one hour for dinner, when Shipp, Democratic inspector, took box to his house. The Republican inspector could not read or write. Contestee introduced no witness.

Abbeville.

“Porter,” supervisor, p. 100: Kept tally of Republican vote; witness also kept list of 36 Republicans who were not permitted to vote, names not being on poll-book; also 3 whites. The night was dark and rainy. Adjourned for supper at 6 o’clock; the box, being locked and sealed,

was left in the room where election was held, in charge of no one. There were two rooms and one window to the house. Witness says Republicans polled 207 votes; could distinguish Republican tickets from Democratic tickets; box was locked but not sealed; when they returned to count the votes Crosby, Democratic inspector, admitted he had been in there; there was a general turn-out of the Republican vote.

"McDuff," inspector, p. 69: Says they were counting vote when he returned, and that box was left as stated by witness.

Porter, Republican inspector, could not read or write.

Contestee's witnesses.—"Porter," p. 320; "McGowan," p. 321; "Houston," p. 322; "Graham," p. 323: Corroborate above, and add there were 307 Republican votes cast and only 145 Democratic. Returns, p. 391, show 216 Democratic and only 135 Republican votes returned.

"Stoners," p. 324; "Burkley," p. 325: None of contestee's witnesses discovered anything wrong. McGowan thinks everything was "fair and square," and he is the witness who told witness personally that he "would stuff a ballot-box if necessary to seat Republicans."

Sander's Store Precinct.

"Cezar Pegnes," p. 69: Republican inspector. Witness is nearly blind. Polls adjourned one hour for dinner. Mentions other competent and suitable Republicans being there who were intelligent. Republican inspector could not read or write.

Free Springs Precinct.

"Caldwell," p. 72: Polls adjourned one hour for dinner, Democratic inspector taking box to residence of one "Houston," and witness took poll-books. Neither party turned out full vote. Republican inspector could not read or write.

Dallas Precinct.

"Watt," p. 74: Polls adjourned one hour for dinner, Democratic inspector taking box to residence of one Langford. Box was not sealed. Vote was counted with closed doors. Republican inspector could not read or write.

PANOLA COUNTY.

Sardis Precinct.

"Small," p. 157: Was supervisor. The two county election commissioners held the election and *are not sworn* (this is nowhere contradicted). Adjourned one hour or more for supper, over protest of supervisor. Box is placed in vault of clerk's office, and who has the key is not stated. There were nineteen more tickets in the box than there were persons who voted, as shown by list kept by clerks and supervisors. Thirteen Republicans, registered voters, who could not vote, names not on poll-book. Neal and Russin, two Democrats living at another precinct, are allowed to vote.

Contestee's witness.—"Balch," p. 147.

Como Precinct.

"Jackson," inspector, p. 168: Polls adjourned for supper. Box taken to Breckenridge's (whisky shop), and no one left with it (see diagram, p. 168) during supper. Witness was first officer to return from supper, and is let into the room (where box was left) by one "Spears," who was not an election officer. Witness cannot read writing. Some thirty-six persons, chiefly Republicans, could not vote; name not on poll-book.

"Jones," p. 159: Confirms foregoing witness as to adjournment and box; clerks kept no list of voters; witness saw twenty-three persons refused a vote, mostly Republicans; names not on books; a number of Democrats, *planters and merchants*, are permitted to remain in the room all day; Republican inspectors could not read or write.

"Crary," p. 134, contestee's witness: Was officer of election, but was not present when count was commenced.

Longtown Precinct.

"As. Kerv," p. 163: Supervisor. Polls adjourned for supper. Box taken off by Fowler, Democratic inspector. Witness does not know where box was taken. Witness and Republican inspector protest against box being removed, but are overruled. No list of voters was kept. Parties could not vote on account of adjournment. Election was held at saloon of one Baily. Rough words were used because witness and Republican inspector insisted that box should not be removed. Vote was counted in a different house from where the election was held.

"Littlejohn," p. 164: Witness corroborates foregoing witness as to all material points.

Contestee's witness.—"Mitchell," p. 150.

Pleasant Grove Precinct.

"Jones," p. 162: Supervisor. Polls adjourned one hour for dinner, and box locked up in room and no one left with it. Witness protests against this adjournment.

Polls adjourned for supper one hour, and box taken by Taylor, Democratic inspector, to supper.

Contestee's witnesses.—"Floyd," p. 145; "Carter," p. 144: Say election was fair.

Springport Precinct.

"Loiret," supervisor, p. 166: When polls closed adjourned for supper. Box not sealed, but deposited in room adjoining where election was held, and no one left with it. No list of voters was kept.

Contestee's witness.—"Keaton," p. 135.

TATE COUNTY.*Arkabutla Precinct.*

"Dangerfield," p. 180: Polls were closed one hour at noon, and box taken to Eason's dwelling and locked up in a room, no one remaining with it. Also adjourned one hour for supper. Box taken to same place and left unguarded. Contestee has no witnesses.

Independence Precinct.

"Walker," p. 180: Polls closed one hour for dinner. Box taken to dinner by Morrison, Democratic inspector. Also adjourned one and a half hours for supper, and box taken to supper by Powers, Democratic inspector. The inspectors at this precinct were all Democrats.

Contestee has no witnesses at this precinct.

Senatobia Precinct.

"Carrington," p. 176: Polls adjourned for one hour for dinner, and box taken by Waits, Democratic inspector, who *carries it to his residence over protest of witness.*

Contestee introduced no witness at this precinct.

Sherrod Precinct.

"Wright," p. 182: Was clerk of election, and testifies he was not sworn. Polls adjourned one hour for dinner, box remaining in hands of supervisor and one inspector. Twenty Republicans refused a vote; names not on poll-book.

Contestee has no witnesses at this precinct.

Looxahoma Precinct.

"Briggs," p. 179: Says polls adjourned three-quarters of an hour for dinner, and box remained in room where election was held, witness and others remaining with it, thinking election was fair. Witness thinks election was fair.

Taylor's Precinct.

"Haynes," p. 175: Supervisor. Testifies to the plan laid by the Democratic inspector to break up the election by refusing to hold an election or preventing any one else from holding it, and that it was frustrated by the *persistent efforts* of this intelligent supervisor. This is the largest Republican box *in the county*. (See returns, p. 392.)

We have not thought it necessary to make reference to evidence by precincts where the election seems to have been fairly conducted, and where the election is not challenged by contestant, and where he introduces no witnesses.

TALLAHATCHIE COUNTY.*Charleston Precinct.*

"Pollard," p. 193: Polls opened at usual hour; adjourned for dinner for one hour. Box was taken by Democratic inspector to residence of one Polk; during this time vote was counted privately and admission was refused to every one; 29 "Buchanan's" tickets thrown out as being too narrow.

Contestee's witness.—"Betts," p. 419; "Leigh," p. 415; "Wynn," p. 409; "Borvoy," p. 407: Say election and count was fair.

Brooklyn Precinct.

"Crawford," p. 192: Was inspector; adjourned one hour for dinner

and box taken by Democratic inspector to his boarding-house; witness did not go with it.

Contestee's witness.—"Lafrine," p. 415: Says that the count was made with closed doors.

Jenning's Store Precinct.

Contestee's witness.—"Houston," p. 406: Polls opened between seven and eight o'clock, and adjourned three quarters of an hour for dinner, Phelps, Democratic inspector, taking charge of box. Vote was counted with closed doors.

Leverett's Store.

Contestee's witness.—"Bloodworth," p. 410: Polls opened as "near six o'clock as we could." Count was made with closed doors. Witness says that Republicans usually carry this box by some 65 or 70 majority; that there was a good turn-out, and that there were only 15 or 20 white voters at box.

Dog Moor Flat Precinct.

Contestee's witness.—"Demnan," p. 412: Polls opened about seven o'clock and closed about sundown. It was a Republican box.

Record, p. 392: The county canvassers fail to make any return of the vote of this county by precincts.

"Hibernia" Precinct.

"Greene," p. 191: Supervisor. Witness remained until $5\frac{1}{2}$ o'clock; 69 votes had been counted up to that time; all Republicans. Mr. Ray, Democratic inspector, held the election.

"Downey," p. 195: Shows that box was thrown out and not counted by county commissioners, and that Ray took out all books and box to hold election.

Contestee's witness.—"McAfee," p. 418: Testifies that blank forms for making returns were sent out in all the boxes.

Ross's Mill Precinct.

"King," p. 191: Inspector. Polls adjourned one hour for dinner, and box was taken by Democratic officers to Ross's residence. Witness did not go with it. Contestee introduced not any witnesses at this box.

A part of the committee find that the evidence does not satisfy their minds that a conspiracy existed for the purpose of defeating contestant; but to the minds of the majority this proposition is quite certainly established, and as proof of this we briefly call attention to a few facts shown by the evidence. By the census of 1880 (see Record, p. 199) it is shown that the six counties of Marshall, De Soto, Panola, La Fayette, Tallahatchie, and Tate contained a population in the aggregate as follows:

| | |
|--------------|--------|
| Colored..... | 79,904 |
| White | 52,744 |

Taking the rule that one in five are voters, we have—

| | |
|-----------------------|--------|
| Colored voters | 15,840 |
| White voters..... | 10,544 |
| Colored majority..... | 5,296 |

And it is shown beyond a doubt that five of these counties had and have large Republican majorities, and only one (La Fayette) which has a small Democratic majority; yet in these counties we find that the Republican majority is, *prima facie*, 5,296.

The evidence shows very conclusively that there are at least as many white Republicans in these counties as there are black Democrats. The returns from these counties and others composing the district (Record, page 392) show that Harris, the Greenback candidate, received 3,585 votes, and that most of these were cast by white voters, and no part of these votes were cast in either of these six counties except in the county of Panola, where he received about 400 votes. The white votes received by him in these six counties are as follows (Record, page 392):

| | |
|--|-----------|
| De Soto County | 83 |
| La Fayette County | 301 |
| Marshall County | 313 |
| Tallahatchie County | 17 |
| Tate County | 299 |
| Panola County | 487 |
| Total | 1,500 |
| Colored majority as stated in these six counties being | 5,296 |
| Deduct colored vote in Panola County | 400 |
| Add white vote for Harris in these six counties | 4,896 |
| 1,500 | 6,396 |

By this it appears that contestee was in the minority in these six counties, 6,396; yet in the face of this the returns (see Record, page 393) give the contestee a majority of 2,153 votes. This state of affairs cannot but create suspicion, and engender a belief that the Mississippi plan succeeded.

And your committee would state that the above is based on the evidence of contestee (Record, page 215) and the witness Wimberly (page 470 of Record, question 1 on cross-examination).

It would extend this report to an unprecedented length to give in detail all the evidence tending strongly to prove a conspiracy to do just what was done, to wit, to count in the contestee at all hazards. But we briefly state that the evidence shows that in over fifty places the ballot-boxes were taken away, and out of the view of the supervisor, either at noon or after the polls were closed, and carried to private residences and locked in rooms and left unguarded, and the supervisors not even allowed to remain with them. All this against the earnest protest of the supervisors. All of these things were in direct and flagrant violation of law; and the evidence shows that in several instances the vote was counted in secret, and not in public, as the law requires. And we quote the language of our honorable chairman in his report: "The election was conducted without regard to fairness or common decency." In this the majority sincerely concur. That all kinds of illegal and fraudulent practices were resorted to by the friends of the contestee in these six counties, knowing that a full vote and fair count would, as he himself stated to the witness Harris, be almost solid against him; and in fact the votes were so cast, but not so counted or returned.

It is evident contestee and his friends had the power if they had the votes to carry the election honestly, and if honestly convinced that they had a majority of the votes they certainly would never have resorted

to the shameful frauds they did to count contestant out in these counties known to have large Republican majorities. Why did they, as the evidence shows they did, close the registration of voters ten days before the election in these counties of De Soto, Panola, and Marshall, each with very large Republican majorities, and five days before the election in the Republican county of Tallahatchie; and why, in violation of law, close the registration of voters in the counties of La Fayette and Tate from a week to ten days before the election by sending the books away from the clerk's office to be carried around through the counties to Democratic meetings, so that Republicans could not register when they came to the office for that purpose, and then were refused afterwards because, as they were informed, the time for so doing had passed?

Why did the governor and State board select men in these counties as commissioners to act in behalf of the Republicans who could neither read nor write (and the evidence shows that this class of men were selected in forty-two precincts in these counties), and refused to select any man designated by the Republicans, and also refused to appoint a Greenbacker for the false and groundless reason that there was no such political organization, when the evidence shows that there was a well-organized Greenback party in each of these counties, and numbered amongst its adherents as intelligent men as could be found in the State? But why at the same time did this same board select as commissioners for the counties named to act for and on part of the Democrats, to wit, in the counties of De Soto, Panola, Marshall, La Fayette, and Tallahatchie, men who have been indicted and convicted of the crimes committed at this election, and as stated in the evidence taken in this contest? And we can but conclude that these things were done in pursuance of a conspiracy to unite in a common purpose to cheat and defraud the contestant out of his election.

To all that the evidence discloses there is but one answer, and that is that there was a conspiracy to do these things, and that the purpose was accomplished by a universal disregard of all laws, and a high-handed and reckless debauching of the ballot-boxes, and a treacherous and inhuman trampling down of the rights of the citizen who dared to vote his honest convictions, if those convictions led him to vote any other ticket except the Democratic ticket. And the evidence shows that these outrages are not the result of prejudice to color, but only because of the disposition on the part of the Democrats of that district to carry their election against all opposition, and by any means that will accomplish that object.

SUMMING UP.

First. The appointment of illiterate officers of election is such a manifest disregard of duty and violation of statute law as to render void the whole appointment of election officers. One of the essential duties of county commissioners and precinct inspectors is to sign and certify the returns, and their duty cannot be performed by a person who cannot read and write. Where three persons are named in a statute as necessary to perform an official duty, all must be appointed and all must act, though a majority may control (see *Ballard vs. Davis*, 2 George's Miss. Reports; also authorities heretofore cited). Hence the appointment of illiterate inspectors and commissioners of election would vitiate the whole appointment and destroy the election.

Second. But we do not wish to rest our report on so technical a ground, and hence we hold that the appointment of illiterate inspectors and

commissioners takes away from the return of the election officers that presumption of truth which otherwise it would have, and a party claiming a seat on the return of such officers must show the utmost good faith in the election.

Third. In the case before us, 1st, the action of the governor and State board, their refusal to allow the opposition party to name any of the election commissioners; 2d, the same action on the part of the county commissioners in appointing the precinct inspectors; 3d, the appointment of corrupt and illiterate officers; 4th, the systematic adjournments of the election without sufficient cause; 5th, the premature closing of the registration books, and refusal to register Republican voters, the erasing of names of Republican voters already registered, and the forgery of poll-books; 6th, the failure to *openly* count the vote at the closing of the polls; 7th, the changing of polling places; 8th, the abandonment of ballot-boxes during adjournment, and of their carrying off to private houses during adjournment; the interference with and exclusion of United States supervisors; 9th, the fact that these practices were in counties having large Republican majorities, are conclusive evidence of a conspiracy to defraud.

This being a conspiracy to defraud, there being proof of fraud at a number of precincts, and the illiterate inspectors leaving the door open to unlimited fraud, and there being no proof by contestee of good faith in the election, it must be set aside.

Among all the cases passed upon or now under consideration by your committee we do not find such a condition of affairs as is presented in this case.

One of the principal arguments urged in behalf of contestants in other cases from the South is that the Republican party in that section is largely composed of illiterate colored voters, and that the ascendency to power of such a class would be not only offensive but oppressive; and that therefore the frauds committed were either justifiable or excusable for the protection of the intelligent and property-holding classes of society; and such argument has been used with great force.

In this district, however, while it appears that the colored voters are almost universally Republicans, there is no insignificant portion of the party made up of white voters, men of wealth and intelligence. And those who constitute the Greenback party of the district (they polling about 3,600 votes at this election) are chiefly white voters, lawyers, physicians, and owners of large landed estates, many of whom, as the proof shows, were formerly leaders and held controlling positions in the Democratic party of the district. Yet it is shown that the hostility towards the Greenbackers upon the part of the Democratic party is just as bitter as against the Republicans of the district, and that they are pursued with the same vindictiveness; and their complaints that they are practically disfranchised are just as loud as are the complaints of Republicans.

In reaching a decision in this case we have not been compelled to rely on the evidence of the partisan friends of contestee or contestant alone, but largely upon the testimony of the *Greenbackers*, who are men of intelligence and high standing, as appears by their evidence.

In conclusion, while we are morally certain from the general tenor of the evidence before us that the contestant was grossly defrauded in the election, and while we have no doubt but that he could have proved a clear title to a seat in Congress, we are compelled to say that he has not made out that proof by proper legal evidence. We know the labor,

expense, and experience required to disclose frauds carefully concealed, but we do not feel justified in departing from the rules of evidence so far as to seat the contestant. We are, however, fully satisfied that there was no legal election in the second district of Mississippi, and that the contestee should not longer be permitted to retain a seat which is covered over with fraud. Therefore we recommend the adoption of the following resolutions:

Resolved, That George M. Buchanan is not entitled to a seat in the Forty-seventh Congress.

Resolved, That Van H. Manning is not entitled to a seat in the Forty-seventh Congress from the second Congressional district of Mississippi.

WM. G. THOMPSON.

JOHN R. LYNCH vs. JAMES R. CHALMERS.

SIXTH CONGRESSIONAL DISTRICT OF MISSISSIPPI.

Contestant charges fraud and violation of law on the part of the commissioners of election; that they refused to count votes lawfully cast for contestant because no list of voters was sent with the returns by the precinct officers, because there were more ballots in the box than there were names on the poll-list, because the precinct returns were not certified to by the inspectors or the clerk, and because a large number of ballots bore on their face "devices or marks."

Held, That the rejection of returns because no list of voters was sent with them was improper, and contestant should be given the benefit of such rejected votes.

That the rejection of returns because of excess of ballots over names on the poll-list was improper, and the vote proven should be counted.

That the omission of the certificate of the precinct inspectors and clerk to a precinct return is cured by a certificate of the commissioners of election as to the number of votes rejected for that reason.

That the printer's dashes, such as were used on the tickets in this case, and objected to as being "devices or marks," are known among printers as punctuation marks; that they were not used or placed upon the tickets for the purpose of distinguishing them from any other tickets, nor as a device for that purpose, and not being of themselves devices they are not inimical to the statute which provides "all ballots shall be * * * without any device or mark by which one ticket may be distinguished from another."

The House adopted the majority report.

APRIL 6, 1882.—Mr. CALKINS, from the Committee on Elections, submitted the following

R E P O R T:

Your committee, to whom was referred the above-entitled contested-election case, having had the same under consideration, beg leave to report:

That the contest in this case was commenced by contestant, and the following facts were set out by him in his notice as the grounds on which he relied to maintain it:

First. He alleges as a fact that he received the highest number of

legal votes cast in the sixth Congressional district in Mississippi for Representative in the Forty-seventh Congress.

Second. That the true result and return was suppressed and made to appear the other way by reason of frauds and violation of law, more particularly set forth as follows:

a. In Adams County, city of Natchez, Jefferson Hotel and Washington precincts, Republican voters were purposely and fraudulently hindered and delayed in voting until the time arrived for the closing of the polls, leaving several hundred voters standing around the polls anxiously waiting to vote, of which privilege they were deprived by a systematic course of delay set on foot and carried out by prominent Democrats and the election officers.

b. That in Washington, Kingston, Pine Ridge, and Beverly precincts the ballot-boxes were tampered with and stuffed, and the further violations of the law in refusing to allow the United States supervisors to be present and witness the counting of the votes after the election closed; and at Palestine and Dead Man's Bend precincts, in said county, the election officers fraudulently and unlawfully refused to count the votes polled, whereby 214 votes majority in those precincts were lost to contestant.

c. *Jefferson County*.—At Rodney precinct, where the contestant received 145 majority, the officer in charge of the returns, on his way to the county-seat, with the papers declaring the result of the election, was intercepted, the returns forcibly taken from him and destroyed, whereby the result was lost to the contestant.

d. *Claiborne County*.—At the precinct of Grand Gulf the United States supervisor of elections was refused the right to be present to witness the count, and the ballot-box was stuffed.

e. *Warren County*.—That the commissioners of election threw out 2,029 lawful votes cast for the contestant, and refused to count them.

f. *Issaquena County*.—That the commissioners of election threw out 785 lawful votes cast for the contestant and refused to count them.

g. *Washington County*.—At the voting precincts of Stoneville Refuge and Lake Washington, 170 votes for the contestant were thrown out. At Greenville, Robb, and Stone precincts the ballot-boxes were taken away and counted in the absence of the United States supervisor of election, and without his consent and against his protest. At the Court-House precinct, as well as at the said precincts of Robb and Stone, ballot-boxes were corruptly stuffed.

h. *Bolivar County*.—At the precincts of Australia, Holmes Lake, Bolivar Landing, and Glencoe, 678 legal votes for the contestant were excluded by the officers of election without cause.

i. *Coahoma County*.—That the officers of election excluded and refused to count any of the votes polled in any of the various precincts of that county, except Friar's Point, whereby 700 votes were lost to the contestant.

To this notice the contestee, answering, denied the allegations of fraud in Adams County, and denied specially the other allegations of contestant's notice relative to the various precincts therein, except Palestine and Dead Man's Bend. In those two precincts the contestee alleged that the ballots were rejected strictly in accordance with the laws of Mississippi.

2d. As to Rodney precinct, the contestee admits that there were 247 votes cast for the contestant and 92 for the contestee, and that they were destroyed, but that they ought not to be counted unless it is shown

they were in accordance with section 137 of the Revised Code of Mississippi of 1880.

3d. As to Claiborne County, it is denied that the boxes were stuffed, or that the United States supervisor was refused permission to be present at the counting of the ballots.

4th. As to the votes in Warren County, the contestee alleges in answer specially, that 628 of the 2,029 ballots were not counted for the following reasons: (a) That at Bovenia precinct 174 ballots were too wide; (b) that at the Fourth ward precinct, city of Vicksburg, 214 ballots had marks upon them; (c) that at Prior's Church precinct, 240 ballots had marks upon them; (d) that at the other precincts in said county there were 1,821 ballots marked in violation of law, and were not counted, which makes a total of 2,049, of which 2,029 had on them the name of contestant, and 20 the name of contestee.

5th. As to Issaquena County the contestee alleges that the officers of election rejected the returns made from Skipworth, Ben Lemond, Ingomar, and Hayes' Landing precincts, because the officers of election did not comply with the law, and that the ballots and tally-list did not correspond by from 40 to 60 votes, and that at Hayes' Landing precinct, in addition to the above grounds, the whole crew of a steamboat landed there that day and voted without being registered.

6th. As to Washington County, a general denial is put in, and in addition, contestee alleges that the Stoneville box was rejected because the officers did not comply with section 139 of the Code of Mississippi, and that the box had been taken out of the sight and control of the officers by one Johnson, a partisan of contestant. The Lake Washington box was not counted, because the ballots were not sent up to the commissioners of election, but the statement signed by the clerks and sent up showed a majority of 116 for contestee.

7th. As to Bolivar County, contestee makes a certificate signed by the commissioners of election of that county a part of his answer, and affirms, as we understand it, the legality of their action. They report that they threw out the Australia precinct box—30 Democratic and 192 Republican votes—

Because the returns were not certified to by the inspectors or the clerks. We have thrown out the Holmes Lake precinct, because the box was not opened nor the ballots counted by the inspectors and numbered by the clerks, and no returns or tally-sheet made.

We have thrown out the Bolivar precinct, 45 Democratic and 311 Republican votes, because there was no certified return from the inspectors and clerks. The tally-sheets sent in the box show the names of the electors of the Democratic and Republican parties of James R. Chalmers, John R. Lynch, G. B. Lancaster, M. Rolous, James Winters, —— Fleming, and James White, but does not show for what office they were voted for. The tally is kept on four different sheets of paper. The total can only be guessed at, but not ascertained correctly.

We have rejected the Glencoe precinct vote, 27 Democratic and 233 Republican votes, because the vote was counted out in part by all the inspectors and clerks and then discontinued until next day, when the count was finished by one inspector and one clerk, and a very imperfect tally-sheet and return sent in by these two, not certified to.

JOHN H. JARNAGIN,
RILEY ROLLINS,
W. A. YERGER,
Commissioners of Election.

8th. As to Coahoma County, the contestee denies the allegations of contestant, and affirms that the acts of the election officers were strictly in accordance with the laws of Mississippi. Appended to contestee's answer the following notice is addressed to the contestant:

Notice to Hon. J. R. Lynch.

Now, having answered all of your specifications, you will take notice that I it and endeavor to prove and maintain:

that you did not receive a single legal vote in the sixth Congressional district of pi for member to the Forty-seventh Congress of the United States; that all sets were marked so that they could be, and were, easily distinguished by who could not read, from the Democratic ticket, and also from the regular an ticket, printed at Jackson, Miss., under the supervision of the executive ee of the Republican party, and that your tickets were illegal because not s prescribed by section 137 of the Revised Statutes of Mississippi, 1880.

that these marked tickets were examined and approved by you before they were d, and that you paid four dollars per thousand for these marked tickets, a could have procured from the Republican Executive Committee legal tickets district for one dollar per thousand.

that you made false representation to the secretary of state of Mississippi about ting of your tickets, when attempting to prevent him from issuing to me a te of election.

that your friends and partisans, in violation of law, and contrary to the very of voting by ballot, stood at the polls and kept a list of the voters and how ed as the ballots were handed in.

that at Stoneville and Refuge precinct, in Washington County, your friends tisans, some of whom were United States supervisors of election, browbeat, and intimidated a number of colored voters who desired to vote for me, and d them from so voting.

will insist and maintain that you were unpopular with your own party for many and especially because you opposed the nomination of General Grant for t, and that a large number of leading colored Republicans supported me on up and at the polls; that I was elected and you were not.

JAS. R. CHALMERS.

LEGAL PROCEEDINGS.

Appears from the record that on the 16th day of November, 1880, ntestant went before the Hon. J. A. P. Campbell, one of the e judges of the court of Mississippi, and acting as chancellor of ancry court of Hinds County, Mississippi, and tendered his bill of complaint, in and by which he sought to enjoin the Hon.

C. Meyers, secretary of state, from declaring the contestee ected a Representative in the Forty-seventh Congress from the ngressional district of Mississippi. Among other things in his complaint the contestant alleges that the returns filed in the ry of state's office from the several counties showed that he re- the votes following:

| | |
|---------------------------|--------|
| County..... | 1,194 |
| County..... | 1,715 |
| ne County..... | 288 |
| a County..... | 1,112 |
| ia County..... | 1,118 |
| i County..... | 386 |
| i County..... | 83 |
| County..... | 175 |
| County..... | 506 |
| County..... | 2,086 |
| ston County..... | 1,298 |
| on County..... | 814 |
| otal number of votes..... | 10,775 |

that the contestee received the following votes:

| | |
|----------------|-------|
| County..... | 1,419 |
| County..... | 403 |
| ne County..... | 1,061 |
| a County..... | 553 |
| ia County..... | 173 |
| a County..... | 1,042 |

| | |
|------------------------|-------|
| Quitman County..... | 153 |
| Sharkey County..... | 484 |
| Tunica County..... | 239 |
| Warren County..... | 1,034 |
| Washington County..... | 1,963 |
| Wilkinson County..... | 1,691 |

Total number of votes..... 10,216

He also alleges that there was deducted from the votes thus received for him in the counties of—

| | |
|-----------------|-------|
| Adams..... | 316 |
| Bolivar..... | 736 |
| Coahoma..... | 760 |
| Issaquena..... | 785 |
| Jefferson..... | 250 |
| Warren..... | 2,029 |
| Washington..... | 526 |

Total votes rejected..... 5,402

And from the vote of said Chalmers in the counties of—

| | |
|-----------------|-----|
| Adams..... | 32 |
| Bolivar..... | 102 |
| Coahoma..... | 328 |
| Issaquena..... | 114 |
| Jefferson..... | 92 |
| Warren..... | 20 |
| Washington..... | 356 |

Total votes rejected..... 1,044

And he claimed that the deductions made from his vote were unauthorized and unlawful, and he asked the intervention of the court to prevent the issuing of a certificate of election to the contestee.

Judge Campbell made the following indorsement on the bill of complaint:

I decline to grant the injunction prayed for in the annexed bill, because the House of Representatives of the Congress of the United States is the exclusive judge "of the elections, returns, and qualifications of its own members" (made so by the Constitution of the United States), and a decision of the question as to the election of a member of Congress by any other tribunal would not be authoritative or final. Besides this, the chancery court is not authorized to decide contested elections, and whatever its right, if any, to enjoin in aid of a contest inaugurated in a court of the State, which such court could lawfully determine, it appears to be clear that interference by injunction to prevent an executive officer from performing a duty prescribed by law, in reference to an election as to which no court can decide, so as to conclude anybody or thing, would be without the semblance of right.

J. A. P. CAMPBELL,

One of the Judges of the Supreme Court of Mississippi.

JACKSON, MISS., November 17, 1880.

By the revised code, 1880, of Mississippi, the following provision is made relative to the writ of *mandamus*:

SEC. 2542. On the petition of the State by its attorney-general, or a district attorney, in any matter affecting the public interest, or on petition of any private person who is interested, the writ of *mandamus* shall be issued by a circuit court commanding any inferior tribunal, corporation, board, officer, or person to do or not to do an act the performance or omission of which the law especially enjoins as a duty resulting from an office, trust, or station, and where there is not a plain, adequate, and speedy remedy in the ordinary course of law.

Under this section the district attorney of Tunica County filed his petition in the circuit court of that county against the election commissioners to compel them to reassemble and reject 506 ballots which had been counted for the contestant, Mr. Lynch, and which were claimed to be illegal because they contained marks and devices in violation of the election laws. The petition was denied, and an appeal was taken to

court of the State. The case is reported in 58 Mississippi, as follows:

OGLESBY, DISTRICT ATTORNEY,
vs.
ET AL., COMMISSIONERS OF ELECTION. }

circuit court, Tunica County, Hon. Samuel Powell, judge. December, 1880, Ira D. Oglesby, district attorney for the third judicial circuit court of Tunica County for a mandamus to commissioners of election in that county to reassemble and recanvass the same by the inspectors of election of the votes cast at the election on November, 1880, for a member of Congress from the sixth Congressional district, to require a statement of the result of such recanvass to the secretary of state to be prescribed by the court. The petition alleged that the commission had counted 506 ballots which were illegal because bearing certain signatures prohibited by the statute on elections, and prayed that in the event of a trial it be required to reject such illegal ballots. The petition was filed under the Code of 1880, and stated as jurisdictional facts that the public interest in getting a construction of the election law of this State as to the duties of inspectors and commissioners, concerning which conflicting views are held, that these officers are liable to criminal prosecutions, under the laws of the United States, for any omission or violation of their duties; and commissioners of Warren County have already been indicted and arrested for violation of the election laws. A facsimile of the ballots alleged to have been rejected was attached to the petition, and is as follows:

REPUBLICAN NATIONAL TICKET.

For President,

JAMES A. GARFIELD.

—0—

For Vice-President,

CHESTER A. ARTHUR.

For Electors for President and Vice-President,

HON. WILLIAM R. SPEARS.

HON. R. W. FLOURNOY

DR. J. M. BYNUM,

HON. J. T. STETTLE

CAPT. M. K. MISTER, JR.,

DR. R. H. MONTGOMERY,

JUDGE R. H. CUNY,

HON. CHARLES W. CLARKE

—0—

For Member of the House of Representatives from the 6th Congressional District.

JOHN R. LYNCH

The writ of mandamus was issued, and the commissioners of election appeared and demurred to the petition on the following grounds:

1st. That they are merely ministerial officers, and have no power to reject ballots that have been counted by the inspectors.

2d. That the marks on the ballots for which it is claimed they should be rejected are mere printer's dashes, and are not such distinguishing marks as were contemplated by the statute.

The court sustained the demurrer and dismissed the petition, and the petitioners appealed to this court. The provisions of the election law, code 1880, bearing directly upon the questions involved in this case, are these:

SEC. 137. All ballots shall be written or printed in black ink, with a space not less than one-fifth of an inch between each name, on plain white printing newspaper, not more than two and one-half, nor less than two and one-fourth, inches wide, without any device or mark by which one ticket may be known or distinguished from another, except the words at the head of the ticket; but this shall not prohibit the erasure, correction, or insertion of any name by pencil mark or ink upon the face of the ballot; and a ticket different from that herein prescribed shall not be received or counted.

SEC. 138. When the results shall have been ascertained by the inspectors, they, or one of them, or some fit person designated by them, shall by twelve o'clock noon of the second day after the election, deliver to the commissioners of election, at the court-house of the county, a statement of the whole number of votes given for each person and for what office, and the said commissioners of election shall canvass the returns so made to them, and shall ascertain and disclose the results, and shall, within ten days after the day of said election, deliver a certificate of his election to the person having the greatest number of votes for any office, &c.

SEC. 139. The statement of the result of the election at their precincts shall be certified and signed by the inspectors and clerks, and the poll-book, tally-list, list of voters, ballot-boxes, and ballots shall be delivered as above required to the commissioners of election.

SEC. 140. The commissioners of election shall, within ten days after the election, transmit to the secretary of state, to be filed in his office, a statement of the whole number of votes given in their county for each candidate voted for, for any office at such election, &c.

The case was submitted by counsel without brief or oral argument.

Campbell, J., delivered the opinion of the court:

This case presents for adjudication three questions, namely:

1. Whether the commissioners of election have the right to reject illegal ballots cast and counted by the inspectors of election and returned to them with the statement of the result at the precincts.

2. Whether the ballots which the commissioners of election for Tunica County refused to reject should have been rejected by them as being illegal, for having on them a device or mark by which one may be known or distinguished from another.

3. Whether the action of the commissioners was final, or whether they may be required by mandamus to meet and act in the matter again, as the court may order.

We think it clear that the commissioners of election have the right, which they should exercise, to reject ballots returned to them by the inspectors of the election as having been cast at any of the precincts of their county which show themselves on inspection to be illegal. The law devolves on the commissioners of election the duty to prepare for the election, by revising the register of electors, and the poll-books of the several precincts, so that they may show who are qualified electors, and by appointing inspectors and an officer to keep the peace at each voting place and by distributing ballot-boxes and poll-books. The inspectors are to judge of the qualification of electors so as to receive or reject ballots offered by them, and when the polls are closed the ballots are to be counted, and a statement of the whole number of votes given for each person and for what office is to be made, and this statement, certified and signed by inspectors and clerks, and the poll-book, tally list, list of voters, ballot-boxes, and ballots are to be promptly delivered to the commissioners of election, at the court-house of the county, to the end that they may canvass the returns so made to them, and see that the result of the election at each precinct, as certified to them by the inspectors and clerks, is correct, according to the returns. They are to canvass the returns, that is, they are to scrutinize the acts of those engaged in holding the election at the different places of voting, as shown by the returns made to them in pursuance of law, and determine from such returns who received the greatest number of legal votes, and who is entitled to receive their certificate of election in cases in which they give such certificate, and what return they shall make to the secretary of state.

It is true that commissioners of election are not judicial officers, in the sense of trying causes, hearing evidence, and pronouncing final judgment between parties seeking office, but they are charged with the duty of canvassing returns, which includes the list of voters and list made in counting, and the ballots, and they must examine such

returns and declare the legal result and certify it. If they find an error in computation they must correct it. If they ascertain from the lists of voters that persons not registered, and therefore not legal voters, have cast ballots, they cannot correct that, because of inability to ascertain which ballots are legal and which not; but if they find in the ballot-boxes ballots declared by law to be illegal, and such as shall not be counted, it is their plain duty to reject them; and if in canvassing the returns they ascertain that the inspectors, in disregard of law, have counted ballots it says shall not be counted, that error should be corrected by the canvassers as certainly as an error of arithmetic should be. The law makes the inspectors judges of the qualifications of electors, from necessity, because they are to receive the ballots, and, when received and deposited in the box, it is not supposed by the law to be possible to identify them, but the ballots show for themselves whether or not they conform to law, and there is neither difficulty nor uncertainty in rejecting ballots as being illegal, because of what is shown by them upon inspection. We think the effect of section 137 of the code of 1880 is to condemn as illegal, and not be received or counted, every ballot which has on its back or face any device or mark other than names of persons, by which one ballot may be distinguished from another.

This statute does not condemn devices or marks on the outside of a ballot merely, but clearly embraces the face of the ballot as well. That is apparent from the exception contained in it, and a device or mark on the face of the ballot is as much within what we suppose to have been the object of this provision as one on the outside or back of it. It is apparent from the provision that its object is not only to preserve secrecy as to what ballot an elector casts, which is the leading idea of statutes in some other States, which prohibit any device or mark on a ballot folded which betrays the secret of the voter; its object is to secure absolute uniformity as to the appearance of ballots, in order that intelligence may guide the electors in their selection, and not a mere device or mark by which ignorance may be captivated. The legislature was trying to prevent multitudes from "being voted," and being guided by a mere device or mark by which they should distinguish the ballots they were to use in the process without a knowledge of the names of persons for whom their ballots were being cast. Elections are a contrivance of government which prescribes who are electors and how they may express their will, and it is a legitimate exercise of power to prescribe the description of ballots which shall be used. Section 137 of the code of 1880 does this, and requires all ballots to be written or printed with black ink, with a minimum space between names, on plain white news printing paper of a certain width, and without any device or mark by which one ticket may be known or distinguished from another, &c.; and it declares that a ticket different from that prescribed shall not be received or counted. Considerations of policy dictated the description of ballots prescribed, and it was deemed of such importance to secure an observance of the requirement that it is declared that ballots not conforming to the description prescribed shall not be received or counted.

It would have been competent to impose a penalty on the circulation or use of such ballots, but the means by which their use is sought to be prevented is the rejection of the ballot when offered or from the count. It is not penal for an elector to use a ballot differing from the legal pattern, but it shall not be counted, and thus he fails to express his will through such an instrumentality. If the device or mark is external, and observed by the inspectors, they should not receive the ballot. If it is received, and on being opened is discovered to be of the kind condemned as illegal, it is not to be counted; but if the inspectors count such ballots in disregard of law and their duty the commissioners of election, assembled at the court-house, with time and opportunity afforded to scrutinize and correct, as far as may be done by the data furnished by the face of the return, without a resort to evidence *aliunde*, should reject, as the inspectors should have done, ballots which the law says shall not be counted. The only safe guide as to what ballots are illegal because of devices or marks is the statute. It excludes any mark or device by which one ticket may be known or distinguished from another. A distinction between ballots by means of devices or marks instead of by means of the names on them is what the statute aims to prevent, and we are not at liberty to confine the broad language of the statute to any particular description of devices or marks, for ingenuity would evade any such limit. The law should be enforced as written.

There is no room for distinction between what is directory and what is mandatory, what is essential and what is not. The requirement that ballots shall be written or printed with black ink, with a space not less than one-fifth of an inch between names, seems to have been designed to guard against confusion and mistake as to names of the persons voted for for the different offices, while the requirement of plain white news printing paper of a designated width within narrow limits, and the exclusion of any device or mark by which one ticket may be known or distinguished from another, must have been intended to secure uniformity in the appearance of ballots, so that ignorance and blind party devotion might not be led to the adoption of ballots by the guidance of some mark and devices, as to which they were instructed

by their leaders, and which, instead of intelligent comprehension of whom or what they are casting their ballots for, should determine their selection of ballots to be cast. It was well known that ballots are prepared beforehand under the direction of political managers, and are distributed for use among electors; and it was further known that captivating marks and devices on ballots, appealing to ignorance and blind party zeal, were a favorite resort as an electioneering device deemed legitimate and freely practiced with much effect; and the purpose of section 137 was to stop this pernicious practice, and to make the prohibition effective by prohibiting any mark or device by which one ticket can be distinguished from another, and by rejecting any ballot in violation of its requirements. It was assumed that ballots would still be prepared beforehand by party managers or persons interested in having them legal, and that, as all would be alike, the advantage to one party over another should not consist in tickets, but that ballots must be selected not by devices and marks, but because of the names to be voted for.

We do not think that the commissioners of election can be required to meet and re-canvass the returns of the election. Having made their canvass and declared the result, and transmitted a statement of it to the secretary of state, their connection with the returns ended. Any error committed by them is not to be corrected by requiring them to reassemble and correct it. The legality of their action may be the subject of judicial investigation in cases in which provision is made for contesting the election by an appeal to the courts of the State, but only in those cases.

The House of Representatives of the Congress of the United States is the judge of the elections, returns, and qualifications of its own members, and the courts of the State have nothing to do with this matter.

This case might properly have been disposed of without considering any of the questions made by the record except that last mentioned, but the attorney-general informs us from the bar that doubts exist as to the proper interpretation of the election law of 1880, and that criminal prosecutions have been instituted against the commissioners of election of some of the counties for supposed violations of the law in reference to their duties, and we have complied with his request in declaring our view of the several questions presented by the record.

Judgment affirmed. To be reported.

Chalmers, C. J., took no part in the decision of this case.

I. D. Oglesby, district attorney, *vs.* J. J. Sigman *et al.*

I concur entirely in the opinion of the court as drawn up by Judge Campbell. The duty to examine and reject illegal ballots rests on every officer or court required or authorized by law to count them. The statute prohibits the use of any mark or device on a ballot by which one "ticket may be known or distinguished from another." That the mark or device adopted is a mere printer's mark, commonly used for ornamentation, makes no difference. The statute prohibits any distinguishing mark whatever, and no court has a right to do away with the effect of the statute by holding that marks which are mere printer's ornaments may be used. It is wholly unimportant whether the marking on the ticket was the result of ignorance or a design to evade the statute. The inspectors and commissioners have no power to inquire into motives; nor has the statute made motives important. It condemns as illegal every ballot or ticket which is so marked "that it may be known or distinguished from another." The ticket used in this case and made an exhibit to the petition is thus marked, and should have been rejected. We have nothing to do with the policy or impolicy of the statute. The language is plain and does not admit of construction; and it is the duty of the courts and other officers to obey and enforce it in the sense the words clearly indicate.

GEORGE.

We have set out the decision of the supreme court in full, and, before discussing it, we might as well say here, that so far as the views of the minority or the decisions of the Committee on Elections in former Congresses on this point is concerned (which have been referred to by the contestee), we fully concur in the views there expressed, and adhere to them, with the exception of that part of the report in *Yeates vs. Martin*, in the Forty-sixth Congress, referring to marked ballots. We dissent from the view expressed by the majority of the committee in that case, as did also the minority of the Committee on Elections at the time it was rendered.

It is seriously contended by the contestee that the decision of the supreme court of Mississippi construing the sections of the election laws of that State ought to be followed by Congress, and that it is against the settled doctrine of both Congress and the Federal judiciary to dis-

regard the decisions of State tribunals in construing their own local laws. This is too broadly asserted, and cannot be maintained. It is true that where a decision or a line of decisions has been made by the judiciary of the States, and those decisions have become a "rule of property," the Federal judiciary will follow them. Not to do so would continually place titles to property in jeopardy, and disturb all business transactions. The rule as to all other questions is well stated in *Township of Pine Grove vs. Talcott* (19 Wall., 666-'67), as follows :

It is insisted that the invalidity of the statute has been determined by two judgments of the supreme court of Michigan, and that we are bound to follow these adjudications. With all respect for the eminent tribunal by which the judgments were pronounced, we must be permitted to say that they are not satisfactory to our minds.

The question before us belongs to the domain of general jurisprudence. In this class of cases this court is not bound by the judgment of the courts of States where the cases arise ; it must hear and determine for itself.

There is still another reason why Congress should not be bound by the decisions of State tribunals with regard to election laws, unless such decisions are founded upon sound principles, and comport with reason and justice, which does not apply to the Federal judiciary, and it is this : Every State election law is by the Constitution made a Federal law where Congress has failed to enact laws on that subject, and is adopted by Congress for the purpose of the election of its own members. To say that Congress shall be absolutely bound by State adjudications on the subject of the election of its own members is subversive of the constitutional provision that each House shall be the judge of the election, qualifications, and returns of its own members, and is likewise inimical to the soundest principles of national unity. We cannot safely say that it is simply the duty of this House to register the decrees of State officials relative to the election of its own members.

The foundation of this contention is that if the Congress of the United States fails to enact election laws, and makes use of State laws for its purposes, it adopts not only the laws thus enacted, but the judicial construction of them by the State courts as well.

We do not agree that this is the rule except as it may apply to a "positive statute of the State, and the construction thereof, adopted by the local tribunals, and to rights and titles to things having a permanent locality, such as the rights and titles to real estate, and other matters immovable and intra-territorial in their nature and character." (*Swift vs. Tyson*, 16 Peters, 1-18.) As to matters not local in their nature, the Supreme Court of the United States has uniformly held that the decisions of the State courts were not binding upon it.

Election laws are, or may become, vital to the existence and stability of the House of Representatives, and to hold it must shut itself up in the narrow limits of investigating solely the question as to whether an election has been conducted according to State laws as interpreted by its own judiciary would be to yield at least a part of that prerogative conferred by the Constitution exclusively on the House itself.

It may be stated generally that the House of Representatives will, as a general rule, follow the interpretation given to a State law regulating a Congressional election by the supreme court of a State, where decisions have been continued and uniform in such a way and for such time as to become the fixed and settled law of a State. The processes of determining the election and all questions relating to the honesty and *bona fides* of ascertaining who received the highest number of legal votes must of necessity forever reside exclusively in the House.

Where decisions have been made for a sufficient length of time by

State tribunals construing election laws so that it may be presumed that the people of the State knew what such interpretations were would furnish another good reason why Congress should adopt them in Congressional election cases. But this reason would be of little weight when the election had been held in good faith before such judicial construction had been made, and where there was a conflict of opinion respecting the true interpretation of a statute for the first time on trial.

There is still another cogent reason why this House may, and perhaps should, disregard the decisions of State courts when such decisions are made in cases where there is confessedly no jurisdiction in the court to pass upon the question which it assumes to pass upon, or where the court assumes to pass upon questions not properly involved in the case before it.

We cannot express in better language the effect which *obiter dictum* in judicial opinions should have on future decisions than that employed by Mr. Justice Curtis in *Carroll vs. Carroll*, 16 How., 279-87. After considering the maxim at common law of *stare decisis*, the learned judge proceeds to discuss the 34th section of the judiciary act in connection with the maxim, and then says:

And therefore this court, and other courts organized under the common law, have never felt itself bound by any part of an opinion in any case which was not necessary to the ascertainment of the right or title in question between the parties.

Citing some cases he continues:

And Mr. Chief Justice Marshall said, "It is a maxim not to be disregarded that general expressions in every opinion are to be taken in connection with the case in which those expressions are used." If they go beyond the case they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented. The reason of this maxim is obvious. The question actually before the court is investigated with care and considered in its full extent; other principles which may serve to illustrate it are considered in their relations to the case decided, but the possible bearing on all other cases is seldom completely investigated. The cases *Ex parte Christy*, 3 How., 292, and *Jenness et al. vs. Peck*, 7 How., 612, are in illustration of the rule that any opinion given here or elsewhere cannot be relied on as binding authority unless the case called for its expression. Its weight of reason must depend on what it contains.

There is abundance of authority running through all the reports of the judicial opinions of the various States, and also through the reports of the Supreme Court opinions of the United States, that they will not be bound by the *obiter* of their own decisions, much less that of other courts. And where there is a conflict in the decisions of a State supreme court, other State courts and the Supreme Court of the United States will adopt, not the later, but that line of decisions which best speaks the reason and common sense of the proposition elucidated, except those cases purely local, as pointed out in *Swift vs. Tyson, supra*.

Another suggestion in argument needs greater amplification than can give it now, which is: that by adopting the machinery of the Senate to carry on Congressional elections this House stands in the nature of an appellate court to interpret these election laws so far as they relate to Congressional elections; that it ought not in this view to be bound by the decisions of the State courts at all, unless the reasons given are convincing to the judicial mind of the House while acting in the capacity of a court.

It need, however, hardly be added that a line of carefully considered cases in the States, in which such courts have undoubted jurisdiction so far as they would apply in principle, would go a long way in settling a disputed point of construction in any State election law.

fact it may be said that it would probably be the duty of Congress to follow the settled doctrine thus established.

It now becomes necessary to review the opinion of the supreme court of Mississippi in *Oglesby vs. Sigiman*. As will be seen by an examination of the case it was a mandamus proceeding, under a section of the Mississippi Code, to compel the commissioners of election in Tunica County to reassemble and recount the votes cast in that county on the 2d day of November, 1880, for member of Congress in the sixth Congressional district of Mississippi. The allegations, substantially, are that the election commissioners counted 506 ballots for the contestant in this case, Mr. Lynch, which had upon them marks and devices, and which were illegal under the provisions of sections 137, 138, 139, and 140 of the Mississippi Code, and ought to have been rejected, instead of being counted as they were. A *fac simile* of the ballots challenged is set out on the record, and on the ticket is found certain printers' dashes which are similar to those challenged in the pending contest, and which are the distinguishing marks complained of. The *Oglesby-Sigiman* case "was submitted by counsel without brief or oral argument," as we are informed by the contestee's brief. The judge who delivered the principal opinion in this case closes the opinion of the court with this remark :

The House of Representatives of the Congress of the United States is the judge of the elections, returns, and qualifications of its own members, and the courts of the State have nothing to do with this matter.

The case might properly have been disposed of without considering any of the questions made by the record except that last mentioned, but the attorney-general informed us from the bar that doubts exist as to the proper interpretation of the election law of 1880, and that criminal prosecutions have been instituted against the commissioners of election of some of the counties for supposed violations of the law in reference to their duties, and we have complied with his request in declaring our view of the several questions presented by the record. ●

The point, as remarked by the judge, on which the case might have been disposed of, was as to whether the official life of the election commissioners was *functus officio*, and they were therefore incapable of being brought together to perform official duties; which being determined in the affirmative, the court had nothing to do but to dismiss the petition, as it did when it refused to entertain a petition on behalf of Mr. Lynch, made on the 9th day of December, 1880, to prevent the governor of the State from issuing to the contestee a certificate of election as member of Congress from the sixth Congressional district of Mississippi, on the ground that it had no jurisdiction of the subject-matter of the action.

Had the Mississippi supreme court stopped here the question of how far the decision of State courts in construeing their own election laws ought to bind this House would be free from embarrassment; but the court, after remarking upon its want of jurisdiction on the first two points, stated in the beginning of its opinion, and having disposed of the third on the ground that the official duties of the election officers were at an end and that they could not be reassembled, proceeded to construe the law relative to distinguishing marks, and decide what were such by the terms of the Mississippi Code so far as it could do so, the same being confessedly not before it.

It is sufficient to say that if the argument sustaining the conclusions reached by the Mississippi court met our views of the true construction of the law, a further analysis of the opinion would be unnecessary; but, as we cannot agree with the argument or the conclusion of the court, it becomes necessary to give some of the reasons why we do not concur, and why we do not feel bound by it.

First. The court declared in terms it had no jurisdiction of the subject-matter embraced in the first and second grounds stated in the opinion. The third ground does not involve a construction of the law, and of course cannot be considered in determining the question raised in the pending contest.

It is with great hesitation and reluctance that we feel compelled to disagree with the eminent gentleman who concurred in the opinion, and we do so in no spirit of unjust criticism, for we would much prefer to follow rather than dissent from it. Had the opinion been rendered before the election of 1880, or become one of settled law of Mississippi, we do not say but that it would have such weight with us that, though we might disagree with it in logic, we might feel compelled to follow it. We think that the decision is against the current of authority and contrary to the well-settled doctrine heretofore discussed; that it can be regarded as *obiter dictum* merely, and as the opinion of eminent gentlemen learned in the law, but not as a judicial construction of the code. It may happen, should the supreme court of Mississippi adhere in the future to the reasons advanced in this case, in cases where it has jurisdiction, that this House will adopt them; but until the happening of this event we cannot say that the reasons given in the Oglesby-Sigiman case are controlling.

The general doctrine in constructing election statutes is, that they are to be construed liberally as to the elector and strictly as to the officers who have duties to perform under them. A statute directing certain things to be done by election officers ought to be followed by them with a high degree of strictness, but duties to be performed by the electors, as declared by statute, are directions merely, which, if not observed, it is true, may in some instances defeat his ballot; but when there is an honest intention to obey the law, and the voter is not put in fault by any laches or negligence which he, by the use of reasonable diligence, might or could avoid, or where there is no palpable intention of violating the law apparent, in order to maintain the inestimable right of voting, courts have generally adopted the most liberal construction.

In an almost unbroken line of precedents, from the foundation of the Government, in all the States this rule has been declared. (McCrary on Elections, sec. 403; Kirk *vs.* Rhoades, 46 Cal., 398; Prince *vs.* Skillen, 71 Me., 493; People *vs.* Kilduff, 15 Ill., 492; Millholland *vs.* Bryant, 39 Ind., 653; The State ex. rel. *vs.* Adams, 65 Ind., 393; Pradut *vs.* Ramsey (5 Morris), 47 Miss., 24, and many other cases not necessary to cite.

In the present case we find, as a matter of fact, that there was no intentional violation of the law, and we further find, as a matter of fact, that every precaution was taken which a reasonably prudent man would be likely to take under similar circumstances; that the contestant in person applied to those whom he might reasonably believe to be well versed in the art of printing, and, with the law in their hands, discussed the question of distinguishing marks, and was assured that tickets would be prepared and printed strictly within the letter of the statute. After the tickets were printed the contestant was assured that they were lawful, and might be relied upon as not being obnoxious to the law. It does not appear that the printer's dashes which appear on the ticket were observed by the contestant or his friends, at least until the morning of the election, after they were all distributed, and it was too late to furnish other tickets; and when the dashes were discovered it was stoutly contended that they were not distinguishing marks within the meaning of the law. It also appears that there was no intention on the part of any one, either those connected with the printing of them,

or those for whose use they were designed, to print the dashes in the tickets for the purpose of distinguishing them from any other ballots of any other party.

It is also proved that tickets precisely similar to those that are questioned in this contest, in so far as the printer's dashes are concerned, were printed and furnished to the opposing party in at least one of the counties in the sixth Congressional district of Mississippi, and were unquestionably voted without a suspicion that they were obnoxious to the law. To further illustrate the entire good faith with which these tickets were printed and used, and how they would be regarded by practical printers, the testimony of Charles Winkley, one of contestee's witnesses, becomes very important; it is as follows:

Cross-interrogatory 2. Are you a practical printer, and have you critically examined the "marks," so called, on the tickets of Lynch, rejected from Warren County? If so, were not these only the usual printer's dashes to be found generally in newspaper articles and upon tickets generally?

Answer. I am a practical printer; I have not critically examined the tickets, but the dashes used are such as any printer of taste would either put in or leave out, according as he wanted to lengthen or shorten the ticket to suit the paper, or otherwise.

Cross-interrogatory 3. If you were called upon generally to print tickets, without any special instructions, is it likely that you would have printed the tickets similar to those complained of and rejected from Warren County?

Answer. I might or might not, just as it might have seemed to strike me at the time.

And further deponent saith not. (Rec., p. 261.)

It further appears that printers' dashes, such as were used on the tickets in this case, are universally known among printers as punctuation marks; in fact most of the characters which appear upon these tickets are set down in Webster's Unabridged Dictionary under the head, "marks of punctuation." It is known to the most casual reader of print that printers' dashes frequently occur in books, newspapers, and publications of all kinds, and to the common understanding to argue that they are of themselves "marks or devices" would not meet approval.

We have already found that they were not used or placed upon the tickets for the purpose of distinguishing them from any other ballots, nor as a device for that purpose, and not being of themselves devices we cannot say that they are inimical to the statute. It is true that printers' dashes *may* be intended and used as a mark or device, and so may different kinds of type, or punctuation marks of different kinds. Arrangement of names and heading of tickets may also be made "marks and devices," and it seems to us that the reasonable interpretation of the law would be, first, in the use of these appliances, which are ordinarily used in printing, were they so arranged as that they become "marks and devices"? and were they so used and arranged for that purpose? and, secondly, was the unusual manner of their being used such as might or ought to put a reasonably prudent man on his guard?

This view of the law would be the extreme limit to which we think we would be justified in going under well-established principles of construction in like cases. No case has been called to our notice which goes this far.

What we have here remarked does not, of course, apply to the marks or devices ordinarily used on tickets, such as spread-eagles, portraits, and the like; those would be considered "marks and devices" of themselves, and not necessary in the ordinary mechanical art of printing. The use of the latter would be considered a violation of the statute in

any aspect of the case, while the use of the former seems to us, in view of the law, ought to be restricted to an intentional or malicious misuse.

The evident object and intention of prohibitory legislation against "marks and devices" is to secure the freedom and purity of election to preserve the secrecy of the ballot, and place the voter beyond reach of improper restraint or influence in casting his ballot, and cannot better express ourselves upon this subject than by quoting the supreme court of California in *Kirk vs. Rhoades, supra*, which is as follows:

The object of these provisions is to secure the freedom and purity of election to place the elector above and beyond the reach of improper influences or restrictions in casting his ballot. When all the ballots cast are similar in appearance, and without any distinguishing mark or characteristic, the most dependent elector in the state may vote with perfect freedom, as his employer or other person upon whom he depends has no means of ascertaining for whom he voted.

It will be observed that there are two classes of things required by section 1191. Over one class the elector can have no control; over the other he has perfect control.

For instance, whether the paper on which his ballot was printed was furnished by the secretary of state or not, or upon paper in every respect precisely like the paper used by the secretary of state, or whether it is four inches in width and twelve inches in length, or less than four inches in width and twelve inches in length, or more than four inches in width and twelve inches in length, or short of this measurement by an eighth, or a sixth, or a fourth of an inch, or whether it is printed in long primer capitals or not, or whether it is single leaded or double leaded—these are matters over which the great majority of electors have no control, and about some of which they are entirely ignorant. The ballots are furnished on the day of election by committees appointed for the purpose of distributing them to the electors of the respective political parties, or by independent candidates or their friends. The elector in but few instances ever sees these tickets until he approaches the polls to cast his ballot, and it would be absurd in the extreme to require him to have a rule by which he could measure and ascertain whether his ticket exceeded or fell short of four inches in length by a sixth of an inch, or only by an eighth of an inch, or what the exact shade of color of his ticket was of the paper furnished by the secretary of state.

Again, not one elector in five hundred knows the difference between long primer capitals or any other capitals, or whether his ticket is single or double leaded. It is impossible that he should know or be able to determine these facts. This very presents a striking instance of the absurdity of requiring the elector to judge of these facts.

The respondent, Rhoades, by his counsel, objected to counting twenty-two votes for Kirk, upon the grounds that they were not printed in long primer capital letters, and that the lines were double-leaded.

Such was this case. Section 1208 expressly required a ballot found in the box to conform to the requirements of section 1191 to be rejected. This section did not say, as the Mississippi law does, omit to state that this rejection should be of the printed ballots when and after found in the box, and yet the court held expressly that all matters regarding character of the type, the paper, the width and length of the lines, etc., they were matters that ordinarily were not under the control of the voter, and that the statute should be held directory as to such matters, and that the claim of respondent that the 22 votes for Kirk should be rejected on account of not being printed in long primer capitals, and that the lines were double-leaded, was by the court overruled. In the conclusion of its opinion the court said :

"To defeat the will of the people in any election it would only be necessary to furnish the electors, or a portion of them, with tickets in which the printed lines were one-forty-fourth part of an inch further apart than required by the code of election which cannot be detected except by an expert. There are, however, other requirements of the code within the power of the elector to control, and if he willfully disregards them, should cause his ballot to be rejected. He can see, for instance, that his ballot is free from every mark, character, device, or thing that would enable any one to distinguish it by the back, and if, in willful disregard of law, he places his name, number, or other mark on it, he cannot complain if his ballot is rejected and he loses his vote."

The above language quoted from this case is the language of the court below the supreme court, after quoting this language in the opinion, closes its opinion in these words:

"We agree with the county judge in his conclusion that the twenty-two votes spoken of were properly counted for Kirk, and that the motion to strike them out of the count was properly denied. Judgment affirmed."

We do not feel called upon to give our reasons why we dissent from much that is said in the opinion in the Mississippi case. It may not be out of place to remark that some of the reasons on which the opinion is based appear to be directly opposed to the current of authority upon which like legislation is maintained. It is remarked that "its object is to secure absolute uniformity as to the appearance of ballots, in order that intelligence may guide the voter in his selection, and not a mere device or mark by which ignorance may be captivated."

Our understanding has been that these laws were designed to protect the weak and ignorant against undue restraint by the strong and powerful, to make the ballot secret and free, and place the dependent on the same plane as the most favored; and that laws of this character ought not to be so construed as to become a snare to the very persons for whose protection they were designed. The learned and powerful need no such protection. The laws are designed for the protection of the weak and unlearned. It seems to us that the construction given to this law inevitably establishes a basis of intelligence—or being able to read, at least, for if you strip all ballots of every punctuation mark, and all dissimilarity in print, and make them of the same paper, of the same size, and similarly spaced, the man who is unable to read will be entirely at the mercy of his more favored neighbor, and thus you will defeat the very thing which the law was intended to prevent.

It is urged that the construction given to this law defeats one of the provisions of the constitution of Mississippi, which extends the right of suffrage to all without reference to illiteracy. This point not having been referred to by the court in Mississippi, we infer that it escaped their attention, and we do not care to go into the question. It is quite evident to us that these laws must pass under judicial notice frequently in the future, and we are quite content not to anticipate the results which may be hereafter reached.

We have examined the question of "printers' dashes," in the first instance, because if we arrived at the same conclusion respecting their illegality as the contestee did, it was manifest to us from the beginning that we would not have to go farther, as this would control the case. Having arrived at a conclusion adverse to contestee, it becomes material to next examine exceptions filed by him to certain of the testimony printed in the record. His exceptions are as follows :

JOHN R. LYNCH, CONTESTANT, }
 vs. }
JAMES R. CHALMERS, CONTESTEE. }

The contestee comes in proper person and excepts to so much of Exhibit D filed as additional testimony in this case, and appearing from page 225 to page 243, inclusive, of the record :

1. Because there is no such officer as chief supervisor of elections for either the northern or southern district of Mississippi known to the laws of the United States and authorized to make such reports.
2. Because there is no law authorizing the supervisors of elections to make any reports of the election in any district outside of a city of twenty thousand inhabitants.
3. Because these pretended reports are not signed by both of the pretended supervisors at each precinct.
4. Because there is no evidence that the parties signing these reports as supervisors were, in fact, appointed United States supervisors of elections.
5. Because there is no evidence that the parties whose names appear to be signed to said reports actually signed the same.
6. Because the pretended reports were not presented as an exhibit to contestant's deposition when taken, and were gathered up by contestant and filed here long after the time for taking testimony in this case.

7. Because the pretended certificate of Orlando Davis appears on its face to have been signed September 13, 1881, long after the time for taking testimony in this case.

8. Because said papers appear on their face to be filed with the Clerk of the House of Representatives on the 21st of December, 1881, long after the time for taking testimony in this case, and do not appear to have been transmitted by any authorized officer of law.

JAS. R. CHALMERS,
Contester.

Before passing upon the question we call attention to the sections of the Revised Statutes bearing on the question of supervisors' returns. Sections 2011 and 2012 authorize the judge of the circuit court, on the application in writing of ten good citizens, to appoint in each election precinct, at which a Representative in Congress is to be voted for, two citizens of different political parties as supervisors of elections. Section 2025 requires the circuit court to designate a circuit court commissioner to act as chief supervisor for the district. Section 2017 specifies the duties to be performed by them, among which are to personally scrutinize the manner in which the voting is done, and in which the poll-books, tally, or check-books are kept. Section 2018 requires that, to the end that each candidate for Representative in Congress shall obtain the benefit of every vote cast for him, the supervisors shall scrutinize personally the count, and canvass each ballot, and make and forward to the chief supervisor (Sec. 2025) certificates and returns of all such ballots as such officer may require.

Section 2026 requires the chief supervisor to "receive, preserve, and file all oaths of office of supervisors of election, and of all special deputy marshals, appointed under the provisions of this title, and of all certificates, returns, reports, and records of every kind and nature contemplated or made requisite by the provisions hereof, save where otherwise herein specially directed."

The contestant contends that these sections apply to country supervisors as well as to supervisors appointed in cities of 20,000 or more inhabitants; while the contestee claims that section 2011 is made up partly of the acts of 1871 and 1872; that sections 2012 to 2027, inclusive, are taken from the act of 1871, and have no reference to supervisors appointed in counties or parishes on the petition of ten citizens, and that 2029 is also taken from acts of 1872. Reference is made by the contestee to the Congressional Globe, page 4455, second session Forty second Congress, to the debate had when this provision was pending in the House.

It is needless to enter into an extended history of this legislation. The disputed question between parties is this: The contestant claims that the statute requires the supervisors of elections in country precincts to make and keep an official record of the result of the votes polled, of the manner of conducting the election, the truth or fairness of the canvass and its conduct, and the honesty of the count, if the chief supervisor shall so direct, and return the same to the chief supervisor, who shall keep and preserve them, and in accordance with law file a certified copy with the Clerk of the House of Representatives; that these returns, or duly certified copies of them, are competent evidence in contested election cases. We copy the following strong statement made by contestant's counsel in support of this contention:

That where the law—either statutory or other—makes a document a public record or file, and requires it to be preserved as such, and puts the custody thereof in the hands of an officer, there as a matter of common law, and without statutes authorizing the custodian to certify to copies of such record, the common law will admit the copy certified by the custodian as evidence of what is provable in any case by the original, is a matter of elementary law. The opposing brief seems to controvert this, as, for example, at the bottom of page 29, where it cites section 104 of McCrary's Elec-

tion Laws. That citation wholly fails to meet or negative the last preceding proposition. That section 104 is a statement simply to this effect:

"That statute-certifying officers can only make their certificates evidence of the facts which the statute requires them to certify; and when they undertake to go beyond this and certify other facts they are unofficial, and no more evidence than the statement of an unofficial person."

We admit there is much force in this argument. But the conclusions we have reached do not make it necessary for us to decide this question, and we do not. We present the following analysis of the various precincts upon the view that it is unnecessary to look to the supervisors' report for any purpose.

WARREN COUNTY.

We correct the returns made in this county as follows: The vote as returned to the secretary of state was: Lynch, 57; Chalmers, 1,014; we add the rejected vote, Lynch, 2,029; Chalmers, 20.

The vote returned by the inspectors to the commissioners of election, and by the commissioners of election to the secretary of state, appears in the subjoined tabulated statement.

| Counties. | Inspectors' returns to com-missioners. | | Commissioners' returns to secretary of state. | |
|----------------------------|--|-----------|---|-----------|
| | Lynch. | Chalmers. | Lynch. | Chalmers. |
| Adams..... | 1, 214 | 1, 419 | 898 | 1, 387 |
| Bolivar..... | 1, 713 | 408 | 979 | 801 |
| Clayborne..... | 288 | 1, 061 | 288 | 1, 061 |
| Cochran..... | 1, 221 | 576 | 852 | 225 |
| Desha..... | 1, 122 | 174 | 883 | 59 |
| Jefferson..... | 383 | 1, 043 | 136 | 961 |
| Oakman..... | 83 | 153 | 83 | 153 |
| Parke..... | 175 | 484 | 175 | 484 |
| Tunica..... | 506 | 239 | 506 | 239 |
| Warren..... | 2, 086 | 1, 034 | 57 | 1, 014 |
| Washington..... | 1, 298 | 1, 963 | 772 | 1, 007 |
| Wilkinson..... | 814 | 1, 691 | 814 | 1, 691 |
| Total..... | 10, 903 | 10, 240 | 5, 898 | 9, 172 |
| | 10, 240 | ..... | ..... | 5, 398 |
| Majority for Lynch..... | 663 | ..... | ..... | 3, 775 |
| Majority for Chalmers..... | ..... | ..... | ..... | ed |

The tabulated statement below shows the number of votes reverts say by the commissioners of election from the counties named: by law e court certified

| | Votes rejected missalor | we also certified | |
|------------------|----------------------------|----------------------|----------|
| | | Lynch. | Chalmers |
| Adams | 816 | 45, in | |
| Bolivar | 734 | | |
| Clayborne | 869 | | |
| Desha | 789 | | |
| Jefferson | 247 | 92 | |
| Washington | 526 | 356 | |
| | 8, 481 | 1, 048 | |

ADAMS COUNTY.

The returns from Dead Man's Bend precinct were rejected by the commissioners of election on the ground that there was no list of voters set up with the returns by the precinct officers. At page 75 of the Record, William J. Henderson, one of the commissioners of election, testifies that the vote of that precinct was: For Lynch, 85; for Chalmers, 15. (See also Record, page 88.) We think the vote of this precinct should be counted. It was rejected for unsubstantial reasons; no fraud is charged, and it would, to our mind, be the grossest injustice to deprive the voters of their right to participate in a choice for their Representative on this ground.

Palestine Precinct.

As to this precinct, Mr. Lynch proves by William J. Henderson, at Record, page 75, of his testimony, that the box was rejected because there were 35 more ballots found therein than there were names on the list of voters kept by the clerks. Mr. Henderson says:

The Palestine returns were rejected because the box contained 35 more ballots than were accounted for in the list of voters as kept by the clerks. * * * To the best of my recollection, the inspectors sent up their returns, stating that there were in the box 17 votes for Chalmers and 270 votes for Lynch, the latter number including 35 votes which were found to be in excess of the list of voters as kept by the clerks.

Leunox Scott, another witness, who was a United States supervisor, testifies, on Record, page 187, that to his own personal knowledge 231 votes were cast at this precinct for Mr. Lynch. An effort was made to explain how the excess of 35 votes appeared. The evidence on this subject is not very satisfactory, but we think, on the whole, that Mr. Lynch should receive 231 votes and Mr. Chalmers 17 from this precinct. (See also Record, page 191, testimony of H. C. Bailey.)

BOLIVAR COUNTY.

Under section 138 of the Mississippi code, the inspectors of elections are required to send up to the commissioners the whole number of votes cast at the poll, and the commissioners under section 140 of the code are required to "transmit to the secretary of state, to be filed in his office, a statement of the whole number of votes given in their county for each candidate."

The duty being enjoined by statute, their certificate is evidence of that they certify the number of votes which they certify were given. That precinct was put in evidence, from which it appears they returned Lynch polled, almers 301. It further appears by a certificate signed by the commissioners of election that they threw out Australia precinct, containing 30 Democratic votes and 192 Republican votes, because the same were "not certified to by the inspectors or the clerks." certifying
these

Bolivar Precinct.

It appears from the same certificate that in this precinct they rejected 20 Democratic votes and 311 Republican votes for the same reason. Another informality is noted, which is that the "tally sheets" were kept on four pieces of paper, and that they do not show what offices the persons whose names appear on the tally sheets were voted for. This can hardly be considered to be a good ground when the ballots were before them, and they could have looked and seen.

Holmes' Lake Precinct.

As to Holmes' Lake precinct it appears that the ballot-box was never opened, and the ballots counted by the inspectors and clerks. The commissioners refused to open and count the votes, and perhaps were not authorized to do so by law. The voters of this precinct are deprived of the right to participate in the choice of their Representative, by the conduct of their present officers.

Glencoe precinct was rejected because the vote was not entirely counted on the night after the election, and the returns were signed by only two of the election officers, not a majority. The commissioners certify that these imperfect returns show that 27 Democratic votes and 233 Republican votes were rejected on account of this informality. In right and justice these votes ought to be counted, but we do not do so on the statement made by the commissioners.

ISSAQUNA COUNTY.

There are two statements in the record, which, taken together, enable us with reasonable certainty to arrive at the vote cast in three of the four rejected precincts of this county. The first is the certificates of election made by the commissioners of election to the secretary of state, and found on page 17 of the Record.

Hay's Landing.

They say with regard to this poll that they find 75 votes reported by the election officers; on four of the ballots all the names are scratched off, and they reject the poll because there was no separate list of voters kept. At page 89 of the Record, Richard Griggs, clerk of the chancery court for Issaquena County, certifies, under the seal of said court, that the paper appearing on that page of the Record is a true and correct transcript of the election returns made by the election officers as appears of record in his office, by which it appears Chalmers received 34 votes and Mr. Chalmers 29 votes for member of Congress. The commissioners of election for that county certify to the secretary of state that they rejected this precinct return, and the clerk of the court certifies that that return is on file in his office, a copy of which he gives. The two statements taken together are *prima facie* evidence of the vote received at that poll. The highest number of votes appearing on the tally-list as certified by the clerk agrees with the number the commissioners say were returned from that poll. The commissioners are authorized by law to certify as a fact the number of votes cast; and the clerk of the court is authorized by law, as the keeper of public records, to give certified transcripts thereof.

For the reasons given in reference to Hay's Landing precinct, we also count Ben Lomond and Duncansby precincts; by reference to which it will be seen that Lynch's vote was 332 and Chalmers's 20 in the former (Record, pages 17 and 90), and 371 for Lynch, and for Chalmers 45, in the latter.

JEFFERSON COUNTY.

The only precinct in dispute in this county is the Rodney precinct poll, the vote of which is admitted to be 247 for Lynch and 92 for respondent. This is shown also by the report of the commissioners, at page 19 of the Record. Having come to a conclusion adverse to contestee in reference to marked ballots, we count this poll as returned.

WASHINGTON COUNTY.

The evidence in the Record, at page 23, shows that the Stoneville precinct was rejected by the commissioners for want of a statement signed by the inspectors of election. Page 206, John Jones testifies that at this poll there were 315 cast for Mr. Lynch and 60 for Mr. Chalmers. He says: "I saw the votes counted, and know that to be the fact and correct." This testimony is uncontradicted, and is sufficient to put the returned member to proof to show why the vote should not be counted. It was the unquestioned duty of the inspectors to make return of this vote as it was cast. The election appears to have been conducted in a quiet and peaceable manner, and no sufficient reason having been given by the commissioners of elections why they did not return the vote, we think it right and fair to count it as the testimony shows it was cast. As to Lake Washington and Refuge precincts, there is no testimony in the Record showing what the vote as cast was. If the supervisors' returns are rejected, and the contestee's exceptions sustained, it leaves us without means to ascertain the true vote at these precincts.

COAHOMA COUNTY.

In this county the commissioners in making the certificate to the secretary of state omit to state what the vote was in the rejected precincts. There were elections held in seven precincts in this county, six of which were rejected by the commissioners, and one, Friar's Point, was counted. There is in the Record, at page 98, a certificate made by R. N. Harris, clerk at the circuit court, giving a transcript of the tally-lists signed by the inspectors of four precincts: Clarksdale, which shows that Lynch received 307 and Chambers 117 votes; in Sunflower, Lynch received 32 and Chambers received 77; Dublin, Lynch 70, Chambers 63; Magnolia, Lynch 109, Chalmers 23. At the Delta precinct the inspectors and clerks did not count the votes, and this box was, therefore, in the same condition as the one at Holmes Lake. The Jonestown precinct is omitted because the clerk fails to certify. The clerk's certificate is probably evidence that these papers are on file in his office, and that they are the returns sent up by the precinct election officers. As to whether they are evidence as to the fact whether so many voters voted for the persons named for the offices named is submitted to the House.

FRAUDULENT RETURNS.

At Kingston precinct, in Adams County, it is conclusively shown by the testimony of Jerry Taylor, Henry B. Fowles, Abraham Teltus, Smith Kinney, Harry Smith, jr., and William H. Lynch, that the vote as cast was 350 and for Chalmers 59. The vote as returned by the precinct election officers was Lynch 160, Chalmers 249. It is shown that there was abundant opportunity for tampering with this box at the noon recess, when it was taken to the residence of one Dr. Farrar, and the Republicans were excluded from the presence of the box, and the aperture was not sealed. The Republican inspector who had the key could not have stuffed the ballot-box in its absence. We think under the evidence this vote should be corrected so as to show the true vote as cast, as testified to by these witnesses who are uncontradicted. We therefore add 190 votes to Mr. Lynch's aggregate and deduct that number from Mr. Chalmers.

The corrected vote of the parties will stand thus:

| | Lynch. | Chalmers. |
|---|--------|-----------|
| Returned vote..... | 5,393 | 9,172 |
| Add rejected votes: | | |
| Warren County..... | 2,029 | 20 |
| Deadman's Bend | 85 | 15 |
| Palestine | 231 | 17 |
| Australia | 192 | 30 |
| Bolivar | 311 | 45 |
| Hay's Landing..... | 39 | 24 |
| Ben Lomonde..... | 332 | 20 |
| Duncansby..... | 371 | 45 |
| Rodney | 247 | 92 |
| Stoneville | 315 | 60 |
| | 9,545 | 9,540 |
| From which we deduct..... | | 190 |
| And add that number to Lynch's vote to correct the returns in Kingston precinct, Adams County..... | 190 | |
| Which makes total..... | 9,735 | 9,350 |
| Majority for Lynch | 385 | |

We have not added the vote of the rejected precincts in Coahoma County, as shown by the clerk's certificate, nor have we corrected the vote in Robb's precinct, in Washington County, where it is charged the ballot-box was tampered with, and about which there is a conflict of testimony.

In three precincts in Adams County it is claimed the returns should be thrown out because of mismanagement, misconduct, and abuse of power on the part of the managers in contestee's interests, and peace officers and challengers acting on behalf of and in contestee's interests. And at Washington precinct, in Adams County, they excluded the United States supervisor of elections from the presence of the box from the time of adjournment in the evening to the time of commencing the counting of the vote in the morning. In precincts of Court-House and Jefferson Hotel it is claimed that the Republican voters were prevented from voting by a systematic course of vexatious questions and inexcusable delays, whereby 300 or 400 voters were prevented from voting at all. The evidence on this subject is conflicting, and doubt exists in the minds of the committee whether it is sufficient to exclude these boxes from the count, and we therefore decide to let them stand. As to Washington precinct it may be gravely questioned whether it ought not to go out, but as it can make no difference in the final result we decide to let it stand,

If the precincts in Coahoma County shall be counted the tabulated statement would be as follows:

| | Lynch. | Chalmers. |
|---|--------|-----------|
| Returned vote | 5,393 | 9,172 |
| Add rejected votes: | | |
| Warren County..... | 2,029 | 20 |
| Deadman's Bend | 85 | 15 |
| Palestine | 231 | 17 |
| Australia | 192 | 30 |
| Bolivar | 311 | 92 |
| Hay's Landing..... | 39 | 24 |
| Ben Lomonde..... | 332 | 10 |
| Duncansby..... | 371 | 45 |
| Rodney | 247 | 92 |
| Stoneville | 315 | 60 |
| | 9,545 | 9,540 |
| From which we deduct..... | | 190 |
| And add that number to Lynch's vote to correct the returns in Kingston precinct, Adams County..... | 190 | |
| Which makes total..... | 9,735 | 9,350 |

| | | |
|--------------------------|--------|-------|
| Clarkesdale | 307 | 117 |
| Sunflower | 32 | 77 |
| Dublin | 70 | 63 |
| Magnolia | 109 | 23 |
| | | |
| Total | 10,253 | 9,630 |
| Majority for Lynch | 623 | |

If you add the votes as shown by the supervisor's returns the following table will exhibit the vote:

| | Lynch. | Chalmers. |
|----------------------------|--------|-----------|
| Returned vote | 5,392 | 9,172 |
| Add rejected votes: | | |
| Warren County | 2,029 | 20 |
| Deadman's Bend | 85 | 51 |
| Palestine | 231 | 17 |
| Australia | 192 | 30 |
| Bolivar | 311 | 45 |
| Hay's Landing | 39 | 24 |
| Ben Lomonde | 332 | 20 |
| Duncansby | 371 | 45 |
| Rodney | 247 | 92 |
| Stoneville | 315 | 60 |
| | | |
| | 9,545 | 9,540 |
| From which we deduct | | 190 |

And add that number to Lynch's vote to correct the returns in
Kingston precinct, Adams County

| | Lynch. | Chalmers. |
|---------------------------|--------|-----------|
| Clarkesdale | 307 | 117 |
| Sunflower | 32 | 77 |
| Dublin | 70 | 63 |
| Magnolia | 109 | 23 |
| | | |
| Glencoe | 10,253 | 9,630 |
| Dumbarton, or Duval | 231 | 27 |
| Jonestown | 47 | 26 |
| Refuge | 351 | 71 |
| Lake Washington | 99 | 67 |
| | | |
| Total | 11,093 | 10,050 |
| Majority for Lynch | 1,043 | |

These tabulated statements are made for the information of the House. The first tabulated statement shows the result which the undersigned members of the committee all concur in, and upon which the report is based.

Your committee therefore recommend the adoption of the following resolutions:

Resolved, That James R. Chalmers was not elected, and is not entitled to his seat in the Forty-seventh Congress from the sixth district of Mississippi.

Resolved, That John R. Lynch was elected, and is entitled to his seat in the Forty-seventh Congress from the sixth district of Mississippi.

W. H. CALKINS.

A. H. PETTIBONE.

FERRIS JACOBS, JR.

G. W. JONES.

A. A. RANNEY.

S. H. MILLER.

JNO. T. WAIT.

GEO. C. HAZELTON.

WM. G. THOMPSON.

J. M. RITCHIE.

JOHN PAUL.

Mr. AETHERTON, from the Committee on Elections, submitted the following as the

VIEWS OF THE MINORITY :

We cannot concur in the views expressed by the majority of the committee in this case. There are three legal propositions in this case necessary to sustain the report as presented by the majority, either one of which, decided in the negative, will defeat the claim of the contestant.

1st. Will Congress receive and count votes of which there is no evidence except the certificate of a chancery clerk as to what purports to be a transcript of election returns of record in his office, when there is no law in Mississippi authorizing any record to be made of election returns by any officer, and when neither the chancery nor circuit clerk, nor any other officer in Mississippi, is by law made the custodian of the election returns after they have been counted by the commissioners of election?

2d. Can Congress count votes which were rejected by the county commissioners because they were not certified to by the inspector, as required by law, when there is no other proof of their validity except the fact that the commissioners of election in their statement of the result give the number of ballots so rejected?

3d. Will Congress refuse to follow the construction of a State statute of election given by a State court?

That the essentiality of these points in this case may be clearly understood we present the result reached by the first tabulated statement made by the majority, upon which alone they all concur, and upon which they say their report is based:

| | Lynch. | Chalmers. |
|---|--------|-----------|
| Returned vote | 5,393 | 9,172 |
| Add rejected votes: | | |
| Warren County | 2,029 | 20 |
| Deadman's Bend | 85 | 15 |
| Palestine | 231 | 17 |
| Australia | 192 | 30 |
| Bolivar | 311 | 45 |
| Hay's Landing | 39 | 24 |
| Ben Lomonde | 332 | 20 |
| Duncansby | 371 | 45 |
| Rodney | 247 | 92 |
| Stoneville | 315 | 60 |
| | 9,545 | 9,540 |
| From which we deduct..... | | 190 |
| And add that number to Lynch's vote to correct the returns in Kinston precinct, Adams County | 190 | |
| Which makes total..... | 9,735 | 9,350 |
| Majority for Lynch..... | 385 | |

From this statement it will be seen that the vote of Issaquena County at Hay's Landing, Ben Lomonde, and Duncansby, amounting in the aggregate to 742 votes for Lynch and 89 for Chalmers, are counted to make a majority of 385 claimed for Lynch, and it is clear that if these are not counted, there is a majority of 315 for Chalmers. Now, these votes are counted on the certificate of Richard Griggs, chancery clerk of Issaquena County, as confirmatory or auxiliary evidence. The majority say:

There are two statements in the Record which, taken together, enable

us with reasonable certainty to arrive at the vote cast in three of the four rejected precincts of this county. The first is the certificates of election made by commissioners of election to the secretary of state, and found on page 17 of the Record.

HAY'S LANDING.

They say with regard to this poll, that they find 75 votes reported by the election officers; on four of the ballots all the names are scratched off, and they reject the poll because there was no separate list of voters kept. At page 89 of the Record, Richard Griggs, clerk of the chancery court for Issaquena County, certifies under the seal of said court that the paper appearing on that page of the record is a true and correct transcript of the election returns made by the election officers as appears of record in his office, by which it appears Lynch received 34 votes, and Mr. Chalmers 29 votes for member of Congress. The commissioners of election for that county certify to the secretary of state that they rejected this precinct return, and the clerk of the court certifies that that return is on file in his office, a copy of which he gives. The two statements taken together are *prima facie* evidence of the vote received at the poll. The highest number of votes appearing on the tally-list as certified by the clerk agrees with the number the commissioners say were returned from that poll. The commissioners are authorized by law to certify as a fact the number of votes cast, and the clerk of the court is authorized by law, as the keeper of public records, to give certified transcripts thereof.

For the reasons given in reference to Hay's Landing precinct, we also count Ben Lomonde and Duncansby precincts, by reference to which it will be seen that Lynch's vote was 332 and Chalmer's 20 in the former (Record, pages 17 and 90), and 371 for Lynch, and for Chalmers 45, in the latter.

Now, it is clear that the certificate of the commissioners to the secretary of state is not of itself sufficient to prove the votes rejected in this county, and the majority do not so pretend. It is equally clear that the certificate of the chancery clerk if it was evidence for any purpose would fully prove the vote by itself without any aid from the certificate of the commissioners, but the majority do not claim this for that certificate. But because the number of votes stated by the commissioner to have been rejected corresponds with the pretended certificate of the clerk we are asked to receive this as corroborating evidence. But in order to reach this conclusion the majority say that "the clerk of the court is authorized by law, as the keeper of public records, to give certified transcripts thereof." That is true when the clerk is "keeper of the record," but the election returns form no part of any public records in Mississippi, and therefore neither the chancery clerk nor any other officer is the keeper of election returns after they have been counted, and can give no certified transcripts thereof.

That there may be no mistake about this we give all the election laws of the Code of 1880 of Mississippi bearing even remotely on this question :

SEC. 105. The books of registration of the electors of the several election districts in each county and the poll-books as heretofore made out shall be delivered by the county board of registration in each county, if not already done, to the clerk of the circuit court of the county, who shall carefully preserve them as records of his office, and the poll-books shall be delivered in time for every election to the commissioners of election, and after the election shall be returned to said clerk.

SEC. 106. The clerk of the circuit court of each county shall register on the registration book of the election district of the residence of each person any one entitled to be registered as an elector, upon his appearing before him and taking and subscribing the oath required by article 7, sec. 3, of the constitution, &c.

SEC. 107. When an elector duly registered shall change his residence to another election district in the same county he may be registered in the election district to which he has removed by appearing before the circuit clerk and requesting him to erase his name from the register of election in the district of his former residence and to place it on that of his present residence, which said clerk shall do.

Sec. 108 provides no person convicted of felony shall be registered

or if convicted after registration the circuit court shall erase his name from the registration book.

Sec. 116 fixes the pay of the circuit court clerk for acting as registrar.

Sec. 126. The commissioners of election in each county shall procure, if not already provided, at the expense of the county, which shall be paid by order of the board of supervisors, a sufficient number of ballot boxes, which shall be distributed by them to each election precinct of the county before the time for opening the polls, which boxes shall be secured by good and substantial locks; and if an adjournment shall take place after opening the polls and before all the votes shall be counted, the box shall be securely closed and locked, so as to prevent the admission of anything into it during the time of adjournment, and the box shall be kept by one of the inspectors and the key by another of the inspectors, and the inspector having the box shall carefully keep it and neither unlock nor open it himself, nor permit it to be done, or permit any person to have any access to it during the time of such adjournment.

Sec. 137. All ballots shall be written or printed in black ink, with a space not less than one-fifth of an inch between each name, on plain white printing newspaper, not more than two and one-half nor less than two and one-fourth inches wide, without any device or mark by which one ticket may be known or distinguished from another, except the words at the head of the ticket; but this shall not prohibit the erasure, correction, or insertion of any name by pencil mark or ink upon the face of the ballot; and a ticket different from that herein prescribed shall not be received or counted.

Sec. 138. When the results shall have been ascertained by the inspectors, they, or one of them, or some fit person designated by them, shall, by twelve o'clock noon of the second day after the election, deliver to the commissioners of election, at the court-house of the county, a statement of the whole number of votes given for each person and for what office; and the said commissioners of election shall canvass the returns so made to them, and shall ascertain and disclose the results, and shall, within ten days after the day of said election, deliver a certificate of his election to the person having the greatest number of votes for any office, &c.

Sec. 139. The statement of the result of the election at their precincts shall be certified and signed by the inspectors and clerks, and the poll-book, tally-list, list of voters, ballot-boxes, and ballots shall be delivered as above required to the commissioners of election.

Sec. 140. The commissioners of election shall, within ten days after the election, transmit to the secretary of state, to be filed in his office, a statement of the whole number of votes given in their county for each candidate voted for for any office at such election, &c.

From this it will be seen that neither the circuit clerk nor chancery clerk is the keeper of any public record which contains election returns, and that the certificate of Griggs in this case is a nullity. The law on that subject is as follows:

The law is well settled that statute-certifying officers can only make their certificates evidence of the facts of which the statute requires them to certify, and when they undertake to go beyond this and certify other facts they are unofficial and no more evidence than the statement of an unofficial person. (*Swetzer vs. Anderson*, 2 Bartlett, 374.) This rule of course applies to election returns and to all certificates which are by law required to be made by officers of election, or of registration, or by returning officers. *They can only certify to such facts as the law requires them to certify.* (Am. Law of Elections, sec. 104.)

In the United States district court, in the case of the *United States vs. Souder*, it was held:

In New Jersey a copy of the return of the township election filed with the clerk of the county and sent to the office of the secretary of state, accompanied by the clerk's certificate that it is a full and perfect return of said election as filed in his office, is not so made and certified and does not come from such a source as to constitute it an official paper. (2 Abbott C. C. Rep., 456;) 1 Greenleaf, sec. 498, "Certificates."

In regard to *certificates given by persons in official station*, the general rule is that the law never allows a certificate of a mere matter of fact, not coupled with any matter of law, to be admitted as evidence. (Willes, 549, 550, per Willes, Ld. Ch. Justice.)

If the person was bound to record the fact, then the proper evidence is a copy of the record duly authenticated.

But as to matters which he was not bound to record, his certificate, being extra official, is merely the statement of a private person, and will therefore be rejected. (*Oakes vs. Hill*, 14 Pick., 442, 448; *Wolfe vs. Washburn*, 6 Cowen, 261; *Jackson vs. Miller*, 6 Cowen, 751; *Governor vs. McAfee*, 2 Dev., 15, 18; *United States vs. Buford*, 3 Peters, 12, 29; *Childers vs. Cutter*, 16 Miss., 24.)

Rejecting, therefore, the vote added by the majority report in Issaquena County, on the certificate of Griggs, the chancery clerk, and taking the other returns as made out by the majority, the result is as follows:

| | Lynch. | Chalmers. |
|--|--------|-----------|
| Returned vote..... | 5,393 | 9,172 |
| Add rejected votes: | | |
| Warren County..... | 2,029 | 20 |
| Deadman's Bend..... | 85 | 15 |
| Palestine..... | 231 | 17 |
| Australia | 192 | 30 |
| Bolivar | 311 | 92 |
| Rodney | 247 | 92 |
| Stoneville..... | 315 | 60 |
| | <hr/> | <hr/> |
| | 8,803 | 9,498 |
| Add 190 to Lynch and take same from Chalmers at Kingston | 190 | 190 |
| | <hr/> | <hr/> |
| | 8,993 | 9,308 |
| | | <hr/> |
| | | 8,993 |
| | | <hr/> |
| Leaving majority for Chalmers of..... | | 315 |

BOLIVAR COUNTY.

But to accomplish even this reduction of the proper majority of Chalmers the votes claimed by contestant in Bolivar County at Australia and Bolivar precinct' are counted. The returns from these precincts were rejected by the commissioners of election because they were not certified to. In other words, the commissioners had no legal evidence that the ballots returned in these boxes were ever cast by voters. They might have been stuffed in by any one on the road from the precinct to the court-house.

That returns not certified to can never be counted is stated to be law by every writer on election cases. The certificate is essential.

The rule of law on that subject has been thus stated in the American Laws of Elections by Hon. George W. McCrary:

SEC. 174. It is the duty of the party seeking to avail himself of a vote which is not legally certified and returned to make the necessary proof to supply the place of the usual formal certificate, and if he fails to do so such vote cannot of course be received.

SEC. 363. The general rule is that when the return is set aside both parties must prove their votes by other evidence.

SEC. 365. It is impossible to state more definitely than we have done the general rule which should govern in determining whether a return should be set aside, and the parties on either side required to prove their actual vote by other evidence.

SEC. 391. It is very clear that if the returns are set aside no votes not otherwise proven can be counted.

The majority of the committee do not deny this principle of law, but they contend that the votes, though rejected for a lawful reason by the commissioners, must now be counted, because the commissioners in their certificate to the secretary of state show how many votes were rejected. They say:

BOLIVAR COUNTY.

Under section 138 of the Mississippi code the inspectors of elections are required to send up to the commissioners the whole number of votes cast at the poll, and the commissioners, under section 140 of the code, are required to "transmit to the secretary of state, to be filed in his office, a statement of the whole number of votes given in their county for each candidate."

This duty being enjoined by statute, their certificate is evidence of the fact that the number of votes which they certify were given.

The majority are mistaken in this statement of the duty of the inspectors under the law of Mississippi. Their duty under section 138 is not "to send up to the commissioners the whole number of votes cast," but "a statement of the whole number of votes," &c.; and by section 139 it is required that the statement shall be certified as correct by both the inspectors and their clerks. (See sections 138 and 139, above set out.)

Now, it is clear that the certificate is essential to identify and make certain the return, and that without the certificate it is no legal return and cannot be counted or considered as evidence in any way.

Without the certificate the commissioners, who know nothing of their own knowledge as to the election, can certainly make no statement of the votes that would import verity as to the result. They are required to report to the secretary of state as follows:

SEC. 140. The commissioners of election shall, within ten days after the election, transmit to the secretary of state, to be filed in his office, a statement of the whole number of votes given in their county for each candidate voted for for any office at such election, &c.

If these commissioners had undertaken to count and to transmit to the secretary of state a statement of votes not certified by the inspectors to them, this would have been clearly illegal, and yet when the commissioners of Bolivar County refused to receive and count returns not certified to them, and in the appendix to their statement to the secretary of state stated that they had rejected these votes because not certified, Congress is asked to count them without any other proof that they are good and valid votes except the appended statement of the commissioners as to the number of votes rejected and for whom they purported to be cast.

The commissioners conceived it to be their duty in giving a statement of the whole number of votes to give what they deemed legal and what illegal returns, and because they did this the majority of the committee say—

This duty being enjoined by statute, their certificate is evidence of the fact that the number of votes which they certify were given.

We give the report of the commissioners in full as follows:

Statement of the whole number of votes cast at the general election held in Bolivar County, State of Mississippi, on the 2d day of November, A. D. 1880, as compiled from statements certified to by inspectors from the different precincts in this county, this 4th day of November, A. D. 1880.

FOR PRESIDENTIAL ELECTORS.

(Names voted for.)

For Hancock and English:

| | |
|--------------------------|-----|
| 1. F. G. Barry | 259 |
| 2. C. P. Neilson | 259 |
| 3. C. B. Mitchell | 259 |
| 4. Thos. Spight | 259 |
| 5. Wm. Price | 259 |
| 6. William H. Luce | 259 |
| 7. Robt. N. Miller | 259 |
| 8. Joseph Hirsh | 259 |

For Garfield and Arthur:

| | |
|---------------------------|-------|
| 1. William B. Spears..... | 1,016 |
| 2. R. W. Flournoy | 1,016 |
| 3. J. M. Bynum..... | 1,016 |
| 4. J. T. Settle..... | 1,016 |
| 5. M. K. Mister | 1,016 |
| 6. R. H. Montgomery | 1,016 |
| 7. R. H. Cuny | 1,016 |
| 8. Chas. W. Clark | 1,016 |

For Weaver and Chambers:

| | |
|-----------------------|----|
| 1. R. H. Peele..... | 24 |
| 2. M. M. McLeod..... | 24 |
| 3. J. J. Dennis..... | 24 |
| 4. S. L. Harmon | 24 |
| 5. T. N. Davis | 24 |
| 6. H. B. McGee..... | 24 |
| 7. John T. Hull..... | 24 |
| 8. J. D. Webster..... | 24 |

For member of Congress from sixth Congressional district:

| | |
|------------------------|---|
| James R. Chalmers..... | 3 |
| John R. Lynch..... | 2 |

We, the undersigned, commissioners of election for the county of Bolivar and State of Mississippi, do hereby certify that the above is correct.

Rosedale, Bolivar County, Miss., November 4, 1880.

JNO. H. JARNAGIN,
RILEY ROLLINS,
W. A. YERGER,
Commissioners of Election.

To Hon. H. C. MYERS,
Secretary of State, Jackson, Miss.

The following statement accompanied the foregoing returns :

ROSEDALE, BOLIVAR Co., Miss.,
November 4, 1880.

To Hon. HENRY C. MYERS,
Secretary of State, Jackson, Miss.:

DEAR SIR: We have this day duly met and canvassed the returns of this county, and complied with the law in every respect, as we construed the same after duly consulting the best legal authority in the county, and we now inclose to you our certified report of the same. We have thrown out the Australia precinct box, 30 Democratic and 192 Republican votes, because the returns were not certified to by the inspectors or the clerks. We have thrown out Holmes Lake precinct, because the box was not opened nor the ballots counted by the inspectors and numbered by the clerks, and no returns nor tally-sheet made. We have thrown out the Bolivar precinct, 45 Democratic and 311 Republican votes, because there was no certified return from the inspectors and clerks. The tally-sheets sent in the box show the names of the electors of the Democratic and Republican parties, of James R. Chalmers, John R. Lynch, G. B. Lancaster, M. Roland, James Winters, Fleming, and James White, but does not show for what office they were voted for. The tally is kept on four different sheets of paper. The total can only be guessed at, and not ascertained correctly. We have rejected the Glencoe precinct vote—27 Democratic, 233 Republican votes—because the vote was counted out in part by all the inspectors and clerks, and then discontinued until next day, when the count was finished by one inspector and one clerk, and a very imperfect tally-sheet and return sent in by those two not certified to.

JNO. H. JARNAGIN,
RILEY ROLLINS,
W. A. YERGER,
Commissioners of Election.

If the majority are right as to the effect of the commissioners' certificate, it will be seen that the certificate covers only the votes they counted, and the appended statement, which was no part of the certificate, gives the rejected votes and the cause of their rejection.

We claim, therefore, that Australia and Bolivar precincts should be rejected, and the result, then, allowing votes claimed by the majority, and not so far expected by us, would stand as follows:

| | Lynch. | Chalmers. |
|---|--------|-----------|
| Returned vote..... | 5,393 | 9,172 |
| Add rejected votes: | | |
| Warren County..... | 2,029 | 20 |
| Deadman's Bend..... | 85 | 15 |
| Palestine | 231 | 17 |
| Rodney | 247 | 92 |
| Stoneville | 315 | 60 |
| | 8,300 | 9,376 |
| From which we deduct..... | | 190 |
| And add that number to Lynch's vote to correct the returns in Kingston precinct, Adams County | 190 | |
| | 8,490 | 9,186 |
| | | 8,490 |
| Leaving majority for Chalmers | | 696 |

COAHOMA COUNTY.

The votes claimed by contestant in Coahoma County are not counted by the majority, but they are put into a tabulated statement, it is said, for the information of Congress. For the same information we state that the vote claimed depends for proof entirely upon United States supervisor's certificate and the certificate of the circuit clerk that certain election returns were on file *in the ballot-boxes* in his office. This was a more farcical certificate than that of Griggs in Issaquena County, and the majority, who could not agree that supervisors' certificates were evidence, did not count this vote as claimed by contestant.

UNITED STATES SUPERVISORS.

The majority of the committee have not claimed that the certificates made by United States supervisors of election in districts outside of cities of 20,000 are evidence, but as they have submitted that question to the House we hold that these supervisors are mere witnesses, whose testimony must be obtained, like any other witnesses, by depositions properly taken.

The history of the passage of the act of 1872, the declarations of Mr. Garfield, who reported the bill, and others who took part in the debate, and the very language of sections 2018 and 2029 show that supervisors in Congressional districts outside of cities of 20,000 inhabitants are mere witnesses, and have no power to make certificates.

We quote from the brief of contestant.

Now, in the light of this history, when county supervisors were created, what was meant by the words of limitation used, and now found in section 2029, Revised Statutes, as follows:

The supervisors of election appointed for any county or parish, or any Congressional district, at the instance of ten citizens, as provided in section 2011, shall have no authority to make arrests or to perform other duties than to be in the immediate presence of the officers holding the election, and to witness all their proceedings, including the counting of the votes and the making of a return thereof.

Contestant's brief argues that it was only intended to prevent the county supervisors from making arrests. If this be true, then the words "or to perform other duties than to be in the immediate presence of the officers holding the election, and to witness all their proceedings, including the counting of the votes and the making of a return thereof," have no meaning whatever.

It is claimed in contestant's brief that section 2018 gives all supervisors the power to make returns and certificates.

Let us look at the language.

Section 2018 of the Revised Statutes is as follows :

To the end that each candidate for the office of Representative or Delegate in Congress may obtain the benefit of every vote for him cast, the supervisors of election are and each of them is required to personally scrutinize, count, and canvass each ballot in their election district or voting precinct cast, whatever may be the indorsement on the ballot, or in whatever box it may have been placed or be found; to make and forward to the officer who, in accordance with the provisions of section 2025, has been designated as the chief supervisor of the judicial district in which the city or town wherein they may serve acts, such certificates and returns of all such ballots as such officer may direct and require, and to attach to the registry list, and any and all copies thereof, and to any certificate, statement, or return, whether the same, or any part or portion thereof, be required by any law of the United States, or of any State, Territorial, or municipal law, any statement touching the truth or accuracy of the registry, or the truth or fairness of the election and canvass, which the supervisors of the election, or either of them, may desire to make or attach, or which should properly and honestly be made or attached, in order that the facts may become known.

We have asserted that the words "city or town wherein they may serve," found in the eleventh line of this section, shows clearly that it could not apply to county supervisors, even if this chapter, as it appears in the Revised Statutes, had been passed as a whole, though it was not. But contestant's brief claims that "the allusion in section 2018 to the words 'city or town,' wherein the supervisor may serve, is a clause merely descriptive of the officer to whom returns are to be made, to wit, the chief supervisor."

A glance at the section will show this is not true. The language is "the city or town wherein *they* may serve," not *he* may serve, and is descriptive of the supervisors who are to act in the city or town, and is not descriptive of the chief supervisor. If so, it would have said "in the city or town where *he* may serve." Again, contestant claims that section 2018 of Revised Statutes is directed to supervisors generally, and embraces all persons "sworn as supervisors."

If section 2018 covers the supervisors in county districts, and authorizes them to make reports, then every other power or duty conferred on supervisors by this section must also be conferred on them. Section 2018 requires supervisors "to personally scrutinize, count, and canvass," "to make and forward * * * such certificates and returns of all such ballots," "and to attach to the registry list, and any and all copies thereof, and to any certificate, statement," &c., by whomsoever made, "any statements as to the truth or accuracy of the registry, or the truth or fairness of the election and canvass," &c., which they may desire to make; and any one can see at a glance that this is utterly incompatible with section 2029.

It would be absurd to provide in section 2029 that they should only be present and witness the count made by others, if by section 2018 they were required to count themselves. Again, if by section 2018 they are required to make return it is worse than ridiculous to say in section 2029 they should only witness the returns made by others.

If, therefore, we refuse to receive the certificate of the United States supervisors of election on the certificates of clerks who were not custodians of election returns and could make no certificate about them, the contestee is entitled to retain his seat by 315 majority.

And unless we torture the statement of rejected votes into a certificate of their validity the contestee must hold his seat by 696 majority. This would be sufficient to settle this case, but as the majority of the

mittee have made what we regard as a fatal and hurtful mistake in sing to follow the supreme court of Mississippi in construing its election statute we proceed to discuss that question.

that be decided as it has heretofore been it would, as the majority be committee admit, end this contest at once and leave the sitting ber in undisputed possession of his seat.

OBITER DICTUM.

ut before proceeding to the consideration of that question we wish ispose of two points of objection made by the majority report to the of Oglesby *vs.* Siginan, 58 Miss. R. They are, first, that the de- n is a mere obiter dictum; and the second, that it is confessedly out jurisdiction. An obiter dictum is an expression of opinion by of argument or illustration, and rendered without due considera- as to its full bearing and effect. To show the want of authority of biter dictum the majority quote from Carroll *vs.* Carroll, 16 How. 7.

ie court say: "If the construction put by the court of a State upon of its statutes was not a matter in judgment, if it might have been ded either way without affecting any right brought into question, according to the common law, an opinion on such a question is not cision. To make it so there must have been an application of the eial mind to the precise question to be determined to fix the rights e parties and decide to whom the property belongs." There can o doubt about the judicial mind being directed to the construction ie Mississippi election laws. The court say they considered them, that they were asked to consider them. This decision is, therefore, obiter as to the marked ballots, because it is one of the very points fully considered and directly decided.

n obiter dictum is exactly what its term imports—a saying of the e outside of and beyond the point decided. Therefore it cannot be that the decision of one of the very questions submitted, and to h the judicial mind was especially directed, is *obiter*. But if we ld admit that the case of Oglesby *vs.* Siginan was obiter we have another decision from the same court on the same subject and of same import. This case cannot be called a partisan decision, be- e a Democratic court gave the office to a Republican contestant. opinion in Perkins *vs.* Carraway says:

tain ballots were rejected from the count because the names of persons voted r representatives in the legislature were found to be less than one-fifth of an apart, and, urged by counsel, we pass upon that question also. Section 137 of ede prescribes the kind of tickets to be used, and, among other things, directs there shall be a space of *not less* than one-fifth of an inch between the names of ns voted for; and declares that "a ticket different from that herein prescribed not be received or counted." The language is unmistakable and imperative. proceeding section indicates plainly the meaning of the word "ticket." It is a ll of paper, on which shall be written or printed the names of the persons for he intends to vote." Ballot is sometimes used by the statute to signify ticket, he latter is never used as synonymous with the former. The "ticket" describes aper, and names of persons, and the offices for which they are voted for. It in- s all. The statute says: "A ticket different from that herein prescribed shall e received or counted." This applies to the entire "scroll of paper," and excludes s whole. The language cannot be satisfied by limiting the exclusion from the t to the ballot for the office in which the vice exists, and we must give effect to angage of the law. It excludes the ticket.

gment affirmed.

his is but a repetition of the doctrine laid down in Oglesby *vs.* Sig -
H. Mis. 35—24

man, that section 137 must be strictly construed. Here, then, is a line of decisions carefully considered, and while it may be true that they construe their statute more strictly than some decisions in other States, we must permit the supreme court of Mississippi to construe its own statutes or abandon the rule heretofore held to be essential to the preservation of our complex system of government.

The majority of this committee refused to follow the supreme court of Mississippi clearly announced in two opinions, and ask Congress to regard section 137 as directory and not mandatory, because the supreme court of California has construed its similar statute to be partly directory and partly mandatory. The argument that a strict enforcement of this law is impossible is contradicted by the facts. In five districts of the State the law was strictly complied with in 1880. Another election was held in 1881, and no marked ballots were used in the State.

The argument that marks are essential to enable ignorant men to distinguish their ballots is an argument against the law and not the decision. The same argument would compel raised tickets to be furnished for the use of blind men. The majority report criticises the object of the law given by the court as follows :

The object is to secure absolute uniformity as to the appearance of ballots, in order that intelligence may guide the electors in their selection, and not a mere device or mark by which ignorance may be captivated.

They maintain that this is prescribing an educational qualification for voting in violation of the Mississippi constitution. This is a clear misapprehension of the meaning of the court. When marks are relied on to distinguish ballots, ignorant men can be, and usually are, deceived by shrewd political opponents. The prohibition of marks protects the ignorant against such deception. Without marks the ignorant voter will not rely on himself, but trust to the intelligence of his friends to distinguish his ticket. Suppression of marks was also essential to preserve the secrecy of the ballot, and yet the contestant admitted that the colored men were ordered or directed to vote an open ticket. This was in violation of the law of Congress which requires voting by ballot. This was equivalent to *viva voce* voting, and subjected to odium all colored men who refused to vote an open ticket. This the contestant said was the mark he adopted, and it was clearly a device by which one ticket might be distinguished from another.

HAD THE COURT JURISDICTION ?

But the majority say—

First. The court declared in terms it had no jurisdiction of the subject-matter embraced in the first and second grounds stated in the opinion; but the court, after remarking upon its want of jurisdiction on the first two points stated in the beginning of its opinion, and having disposed of the third on the ground that the official duties of the election officers were at an end and that they could not be reassembled, proceeded to construe the law relative to distinguishing marks, and decide what were such by the terms of the Mississippi Code so far as it could do so, the same being confessedly not before them.

This is neither legally nor historically true of this decision. The court did not anywhere admit its want of jurisdiction, nor did it, after admitting that a decision of one point in the case might have been sufficient to decide the whole case, proceed to decide the other two points first stated. Historically, it decided first the two first points, and then the third. It is a general rule that where a court has decided one point which is decisive of a case it will not decide others, but this rule is by no means universal. (See Ram on Legal Judgments, 258-9,

and the cases there cited.) But it is an unheard-of proposition to say where there are several distinct and vital points in a case, and the court decides them all, the opinion is not authority except on one point, if that would have been decisive of the case.

Thousands of cases can be found where all the points presented are decided, though the decision of one might have been sufficient. The most notable instance is the case of *ex parte Siebold* (10 Otto). In that case it was only necessary to decide that sec. 5515 of the Revised Statutes United States was constitutional, and that would have settled the whole case; but the court proceeded to settle all the questions that had arisen, or perhaps could arise, under the United States elections laws, including the power of United States marshals to keep the peace at the polls and the power of United States judges to appoint supervisors of election.

We presume no one will say that opinion was either *obiter* or without jurisdiction on any point decided. How, then, can it be said that the supreme court of Mississippi was without jurisdiction to pass upon questions which it assumed to pass upon? Want of jurisdiction might result, first, from general lack of power to adjudicate any question, as where the pretended judges have never been elected or qualified; second, where the court has acquired no jurisdiction of the persons of the parties; third, where it has no jurisdiction of the subject-matter of the action. It is not claimed that the supreme court of Mississippi was not a properly constituted tribunal, nor is any question made touching its jurisdiction over the parties, but that it had no jurisdiction to decide what were and what were not legal ballots. To determine this, let us look at the questions presented and how they were presented. A new election law had been enacted in Mississippi, and the first election held under it. It required marked ballots to be rejected, and they had been by the commissioners of Warren County. These commissioners had been arrested and tried as criminals in the United States court for obeying what they conceived to be the plain language of the law in the discharge of their duty. There was great doubt in the public mind as to what the law meant by marked ballots, and as to who should reject them.

Other commissioners were arrested and threatened with prosecution for their acts in discharge of what they conceived to be their duty under this new election law. The public was greatly excited over these prosecutions, and citizens were saying they would not act as commissioners of election if they were to be prosecuted in the United States courts for exercising their discretion in deciding on their duty.

Under these circumstances the district attorney, Mr. Oglesby, at the suggestion of the attorney-general, filed a petition for *mandamus*, prepared under the direction of the attorney-general, to settle these questions. The statute under which it was filed read as follows:

SECTION 2542 OF THE CODE OF MISSISSIPPI, 1880.

On the petition of a State by its attorney-general, or a district attorney, in any matter affecting the public interest, or on petition of any private person who is interested, the writ of *mandamus* shall be issued by a circuit court commanding any inferior tribunal, corporation, board, officer, or person to do, or not to do, an act, the performance or omission of which the law especially enjoins as a duty resulting from an office, trust, or station; and where there is not a plain, adequate, and speedy remedy in the ordinary course of law.

The jurisdictional facts were stated in the petition, and were certainly matters greatly affecting the public interest. It asked that the commis-

sioners of election be required to reassemble and perform a duty required of them by law, to wit, the rejection of certain marked ballots which had been counted by them. It was directed to an inferior tribunal commanding them to do an act "which the law enjoined as a duty."

The case being decided adversely to the petitioner in the court below, was appealed to the supreme court.

Campbell, J., delivered the opinion of the court.

This case presents for adjudication three questions, namely :

1. Whether the commissioners of election have the right to reject illegal ballots cast and counted by the inspectors of election and returned to them with the statement of the result at the precincts.

2. Whether the ballots which the commissioners of election for Tunica County refused to reject should have been rejected by them as being illegal, for having on them a device or mark by which one may be known or distinguished from another.

3. Whether the action of the commissioners was final, or whether they may be required by mandamus to meet and act in the matter again, as the court may order.

A negative answer to the first question would have rendered further consideration of the case unnecessary. An affirmative answer to the first and a negative answer to the second question would have rendered the determination of the third unnecessary. Each of these questions was purely local and each required the construction of a State statute. Suppose the court had decided that the commissioners could not reject ballots counted and returned to them by the inspectors; this would have decided the case. Would any one have said such decision was without jurisdiction? If the court had decided that the commissioners could reject illegal ballots returned, but that ballots with printers' dashes on them were not illegal, this would have decided the case. Would any lawyer say such decision was without jurisdiction? It was necessary to decide these questions first before the court was called on to decide the third proposition. If the court had jurisdiction to decide that ballots marked with printers' dashes were not illegal, and thus decide this case, had they not jurisdiction to decide the converse of the proposition? It would be a novel legal idea that a court had full jurisdiction to decide a question submitted in one way, but if it decided the same question the other way it was *obiter* or without jurisdiction. The right to determine the case at all carries with it the right to decide either way and upon all points involved.

The court was called on to compel, by *mandamus*, the election commissioners to make right a wrong they had committed. The first thing to be settled was whether he had done any wrong. If the court had decided that the commissioners did right in counting the marked ballots, that would have ended the case, and it would have been unnecessary to go further.

The court held, however, that the commissioners did do wrong, but that it had no power to make them reassemble and right that wrong.

It might be said the court should have stopped short with this declaration, but it did not. It proceeded to show what was the proper remedy for the wrong. It said the remedy was in a contested election. That in State cases this contest must be made before State tribunals and in Congressional elections before Congress.

To claim that this election can have no weight in a contested election before Congress because the court said Congress must settle Congressional contests would lead to the conclusion that it could have no weight in a contest before a State tribunal, because it said the State tribunal must settle State contests.

THE MISSISSIPPI DECISION RIGHT ON PRINCIPLE.

The majority of the committee contend that the case of *Oglesby vs. Sigman* is not sustained by other authority.

The first and leading case on the subject of marked ballots was in Pennsylvania, in *The case of The Commonwealth vs. Woelper*, 3 S. and R., 29. The opinion was delivered by Chief Justice Tighlman and concurred in fully in separate opinions by Justices Yeates and Gibson, and they all held that the law should be strictly construed as written. The court said :

The tickets in favor of those persons who succeeded in the election had on them the engraving of an eagle. The judge who tried the case charged the jury that these tickets ought not to have been counted. The case is certainly within the words of the law. The tickets had something more than the names on them. But is it within the meaning of the law ? I think it is. This engraving might have several ill effects. In the first place, it might be perceived by the inspector, even when folded. This knowledge might possibly influence him in receiving or rejecting the vote. But in the next place, it deprived those persons who did not vote the German ticket of that secrecy which the election by ballot was intended to secure to them. A man who gave in a ticket without an eagle was set down as an anti-German and exposed to the animosity of the party. Another objection is that the symbols of party increase that heat which it is desirable to assuage. We see that at the election some wore eagles on their hats. The case thus falling within the words and practices of this kind leading to inconvenience, I think the court ought not exercise its ingenuity in support of these tickets. Let us at least prevent future altercations at elections by laying down such plain rules for the conduct of inspectors as cannot be mistaken. I am for construing the by-law as it is written, and rejecting all tickets that have anything on them more than the names. This objection strikes at the root of the election, for the evidence is that all the tickets in favor of the defendants were stamped with an eagle. Whatever, therefore, may be the law on other points, it is clear, upon the whole, that the defendants were not duly elected.

The precise same doctrine was held in Oregon. The court says :

Section 30, page 572, of the Code provides that "all ballots used at any election in this State shall be written or printed on a plain white paper without any mark or designation being placed thereon whereby the same may be known or designated." The voter in this instance is conclusively presumed to have had knowledge of this requirement and to have had it in his power to comply with it by using a proper ballot. It was a matter entirely under his own control, and if he chose to disregard the law, he cannot complain if the consequence was that his vote was lost. (*The State vs. McKinnon*, 8 Oregon, 500.)

This fully sustains the Mississippi decision, even if we admit the distinction taken by the majority report that the voter is only bound to observe so much of the law as he could by the exercise of proper diligence in matter under his control. The California case cited by the majority, though it differs from the case of *Perkins vs. Carraway* recently decided in Mississippi, as to the spaces between the names on the ticket, sustains *Oglesby vs. Sigman* as to the marks. The court say :

There are, however, other requirements of the Code within the power of the elector to control, and these, if willfully disregarded, should cause his ballot to be rejected. He can see, for instance, that his ballot is free from every mark, character, device, or thing that would enable any one to distinguish it by the back, and if, in willful disregard of law, he places a name, number, or other mark on it, he cannot complain if his ballot is rejected and he loses his vote. (*Kirk v. Rhoades*, 46 Cal., 398.)

The same doctrine was held in Alabama.

Before Hon. Louis Wyeth, Judge of the Fifth Judicial Court.

THE STATE OF ALABAMA, CULLMAN COUNTY:

CHARLES PLATO }
 vs. } Contest of election.
JULIUS DAMUS. }

In this case Charles Plato contests the election of Julius Damus to the office of mayor of the town of Cullman, in the county of Cullman, claiming to have been elected to that office himself by a majority of the votes cast at the election held on the first Monday in April, 1879.

The respondent claims to hold the office under the certificate of election issued by the proper officers under the provisions of the "act of assembly to establish a new charter for the town of Cullman." (Pamphlet Laws of 1879, p. 304, section 9.)

On examining and counting the votes it appears that fifty-four of them were cast for the contestant and twenty-seven for the respondent; of these fifty-four votes given for the contestant, fifty-two had printed on them at the top of the ballot the words "Corporation ticket," and of the twenty-seven votes cast for respondent three had in like manner printed thereon the same words, and the question for me to decide is whether or not those words rendered the ticket on which they were printed illegal ballots, and such as must be rejected.

The act approved February 12, 1879, Pamphlet Laws, pp. 72-'3, requires that the ballot must be a plain piece of white paper without any figures, marks, rulings, characters, or embellishments thereon, * * * on which must be written or printed * * * only the names of the persons for whom the elector intends to vote, and must designate the office for which each person so named is intended by him to be chosen, and any ballot otherwise than described is illegal, and must be rejected.

The law under which the election now being considered was held, in section 4, Pamphlet Laws 1879, p. 305, declares "that the election provided for in this charter shall be regulated by the general State election law."

The judicial officer of the State has nothing to do with the propriety of a statute. If not void by reason of a constitutional inhibition, the judicial duty is limited to their construction and enforcement.

These ballots had more than *only* the names of the persons for whom the elector intends to vote, or the designation of the office, and must be rejected because illegal. Such is the mandate of law, and so I must declare it.

It is considered, adjudged, and ordered that the election of Julius Damus, as mayor of the town of Cullman, in the county of Cullman, be confirmed, and that the contestant pay the costs of this court.

LOUIS WYETH,
Judge, &c.

JUNE 9, 1879.

Precisely the same doctrine was held by this committee in the case of Yeates *vs.* Martin, and the opinion on that point prepared by Mr. Field, now on the supreme bench of Massachusetts. It said :

One hundred and eight votes for Mr. Martin were thrown out not counted, because they had on them the words "Republican ticket," at or near the head of the ticket, on the same side as the name of the candidate and office. They were thrown out on the ground that the words "Republican ticket" were a device within the meaning of the laws of North Carolina.

If these words constitute a device within the meaning of the law, the statute is plain that the ballots are void and are not to be counted.

Either way, we think that words prominently printed on a ticket, and intended to designate or describe it, and which have a distinct meaning in themselves, such as, if untrue, might mislead the voter, and whether true or untrue would render the ticket easily distinguishable, must be held to be a device within the meaning of the law (McCravy on Elections, § 401). These votes were rejected by the State authorities, and we think rightfully.

It is a simple question whether this statute is mandatory or merely directory.

McCravy, in American Laws of Elections, section 401, says:

It is quite clear where the statute distinctly declares that ballots having distinguishing marks upon them shall not be received or shall be rejected, it should be construed as mandatory and not merely directory.

The Indiana courts hold their statute mandatory if the marks appear on the back of the ticket. The language of the Mississippi statute shows it was intended to apply to marks on the face as well as the back. After prohibiting marks or devices, it says:

But this shall not prohibit the erasure, correction, or insertion of any name by pencil mark or ink upon the face of the ballot.

This exception as to one kind of marks on the face of the ticket clearly shows that any other marks on the face of the ticket are prohibited. We can see the marks on the contestant's ticket ourselves, and it would be our duty to reject them without any decision from the Supreme court of Mississippi. We hold, therefore, that the statute was mandatory, and the decision right in itself. If the court had decided as the majority of the committee now decide, it would have produced the utmost confusion in the State.

A strict construction of the law is always safest and best, and especially of law which refers to political powers, duties, or rights.

When we launch into the broad sea of latitudinous construction we have neither chart nor compass, and the law becomes a dangerous instrument in the hands of those who construe it and who may contract or expand it to suit the demands of those in power.

A contrary decision would have launched every board of election commissioners in the State on a sea of uncertain speculation as to what were and what were not marks within the meaning of the law. Fraud and corruption could be covered under their discretion to determine his question, and the whole election machinery could be converted into a political engine for partisan use. Certainty in law is essential to the reservation of civil rights, and the case of *Oglesby vs. Sigman* gave certainty to the election laws of Mississippi.

There is no longer any doubt or uncertainty. This alone being a matter of great "public interest" would have justified the district attorney, Oglesby, in suing out his petition for mandamus; and if there were no other ground for it, this alone would sustain the jurisdiction of the court. It was not a case of *Lynch vs. Chalmers* to settle a Congressional election, but of the district attorney *vs.* the election commissioners to settle great questions of public interest.

THE EFFECT OF STATE DECISIONS OF STATE STATUTES.

If any rule of law can ever be regarded as settled, certainly the rule that Federal authorities would follow the construction of State statutes by State courts must be regarded as settled by a long line of able and unbroken decisions. The only exceptions made to this rule by the Supreme Court of the United States are where the State courts have made conflicting decisions, as in the case of the city of Dubuque, 1 Wall., 175, or in cases arising under the twenty-fifth section of the judiciary act.

From the time of the case of *Shelby vs. Gray* (in 11 Wheaton, 361), through *Green vs. Neal* (6 Peters, 291), *Christy vs. Pritchett* (4 Wallace, 201), *Tioga Railroad vs. Blossburg Railroad* (20 Wallace, 137), down to *Elmwood vs. Macey* (2 Otto, 289), an unbroken line of decisions will be found.

The court say, in the case of *Green vs. Neal*:

The decision of this question by the highest tribunal of a State should be considered as final by this court, not because the State tribunal, in such a case, has any power to bind this court, but because a fixed and received construction by a State in its own court makes it part of the State law.

In the case of the Tioga Railroad Company *vs.* the Blossburg Railroad, in 20 Wallace, 143, the court uses the following language:

These decisions upon the construction of the statute are binding upon us, what we may think of their soundness on general principles.

See Jefferson Branch Bank *vs.* Skelly (1 Black, 443); Gut *vs.* The State (9 Wall 37); Randall *vs.* Brigham (7 Wallace, 541); Secomb *vs.* Railroad Company (23 Wall 117); Polk's Lessee *vs.* Wendell (9 Cranch, 98); and Nesmith *vs.* Sheldon (7 How 818). Numerous other adjudications of that court could be cited to the same effect.

It is now maintained that this doctrine applies only as a rule of property. The only excuse for this new idea to be found in the decision of the Supreme Court is where the court say they will not follow the decision of a State court changing the construction of its laws after first decision has become a rule of property; otherwise the Supreme Court of the United States would follow the new construction given by the State court. To say that the Supreme Court of the United States will only follow a State court "on a rule of property" is a total misconception of the principle announced by the court. But whatever may be the rule in the Supreme Court of the United States, Congress has in every case, without exception, followed this rule, and in the Tennessee cases in the Forty-second Congress, and the Iowa cases in the Forty-sixth Congress, extended the rule to following the construction of State laws given by the governor of a State. The same rule was followed, and on the question of marked ballots, in case of Neff *vs.* Sharp in the Forty-third Congress, and Yeates *vs.* Martin in the Forty-fourth Congress. The same rule was followed in Bisbee *vs.* Hull, and the doctrine broadly laid down as correct in Boynton *vs.* Loring in the same Congress. We cite the language of the committee in these cases.

CONGRESS FOLLOWS THE STATE DECISIONS.

This rule was first established in the Forty-second Congress in what is called the Tennessee cases, when the report was made by the Hon. G. W. McCrary:

In a report from the Committee on Elections, adopted by this House April 11, 1850, in the matter of the Tennessee election (Digest of Election Cases, compiled by J. Smith, p. 1), the committee say:

"It is a well-established and most salutary rule that where the proper authorities of the State government have given a construction to their own constitution or statutes, that construction will be followed by the Federal authorities. This rule is absolutely necessary to the harmonious working of our complex government, State and national, and your committee are not disposed to be the first to depart from it."

This decision was cited with approbation in the Forty-sixth Congress in the Iowa cases, and in the report on these cases, signed by Messrs. Field, Keifer, Calkins, Camp, Weaver, and Overton, they say:

We are not disposed to be the first to depart from it, and we certainly think that a decision, made in good faith and acquiesced in at the time by the people of a State, and followed by a full and fair election, should not be overthrown or questioned, except for the gravest reasons, founded on an undoubting conviction that it was plainly an error, and that the error had worked some substantial injury.

In the same case Mr. Beltzhoover says:

2. The question whether the constitution of the State of Iowa "must be amended in order to effect a change in the election of State officers," it is one which it is the exclusive right of the State to decide. The persons to whom the constitution and laws of Iowa confide this decision have made it, and their determination is a final and is conclusive on all parties. The committee have not the right to review this decision.

The case of Curtin *vs.* Yocom, in the Forty-sixth Congress, turned upon the construction of the constitution of Pennsylvania, and the

nority report, which was made by Mr. Calkins and signed by Messrs. Keifer and Weaver, relied upon the construction of the State court, and used this emphatic language, speaking of an unregistered voter:

We think this question, under the present constitution and laws of Pennsylvania, not an open one. The highest court of judicature of the State has decided it; at least it has given a construction to that part of the new constitution under consideration, and we quote therefrom.

This minority report was adopted by Congress, and a Greenbacker was permitted to retain his seat in a Democratic House.

In the case of Bisbee *vs.* Hull, in the Forty-sixth Congress, the decision of the supreme court of Florida was held to be conclusive by the committee and the House. When the admission of Mr. Hull, who held the governor's certificate, was under discussion, Mr. Calkins said:

*How can this certificate stand, even as establishing a *prima facie* right, when the basis upon which it rests has been swept away by a decision of the supreme court of the State of Florida?*

When the case was considered on its merits, the committee unanimously followed the decision of the supreme court of Florida, and a Democratic House unseated a Democrat and seated a Republican under it.

The report made by Mr. Keifer uses this emphatic language:

The opinion of the supreme court of Florida, pronounced by the chief justice, on the question of canvassing the vote of the county of Madison, will be found in the Record, p. 221.

"* * * "As already stated, duly certified copies of these returns were put in evidence by the *contestee*; they are signed by all the officers of the election; they are perfect in form, clear and explicit in the statement of the votes cast, and have all been adjudged by the unanimous opinion of the supreme court of Florida, in a case before it, to be good and valid returns of the election at these polls." (17 Florida Rep., p. 17.)

Again, in the case of Boynton *vs.* Loring, the report, which was prepared by Mr. Calkins, and signed by every member of the committee except Mr. Weaver, contains this clear and explicit announcement of the doctrine we contend for. It says:

But it is not necessary for us to decide this question, and we do not, much preferring that the courts of Massachusetts shall first construe their own statutes, and when they have undergone judicial construction we would follow the decisions of the courts of that State.

The Committee on Elections is as much a continuing body in contemplation of law as a court, and should have as much respect for its own rulings as a court has for its decisions, and "*stare decisis*" should be our rule. Under the rule that Federal authorities follow the construction given by State authorities to their own statutes, two Tennessee Republicans were seated in the Forty-second Congress, Shanks, a Republican, was seated in the Forty-third Congress, Yocum, a Greenbacker, Bisbee from Florida, and three Republicans from Iowa were seated in the Forty-sixth Congress. To undertake now to change this rule or limit it to a rule of property, may subject us to the same severe rebuke for oscillation administered to a State court by the Supreme Court of the United States. To say in one Congress we will follow the decision of the supreme court of Massachusetts in construing its statute when made, and in the next Congress refuse to extend the same rule to the supreme court of Mississippi, is glaring inconsistency or invidious distinction between States. If we have respect for ourselves, we should make no radical change of ruling that may subject us to the charge that we "*immolate truth, justice, and law because party has erected the altar and decreed the sacrifice.*"

LIMITATIONS ON THE RULE.

But while the majority of the committee have expressed some views looking to a change in this rule, said to be essential to the preservation of our complex system of government, they do not go to that extent. They say :

It need, however, hardly be added that a line of carefully considered cases in the States, in which such courts have undoubted jurisdiction, so far as they would apply in principle, would go a long way towards settling a disputed point of construction in any State election law. In fact it may be said that it would probably be the duty of Congress to follow the settled doctrine thus established.

We have here two new limitations on the old rule. First, it must not be a single decision, but "a line of carefully considered cases." Second, the court must, in the opinion of Congress, when collaterally considering the subject, have had jurisdiction of the case. It is a new and somewhat startling proposition that the opinion of a supreme court is not to be considered authority until it has been repeated. If the citizens of a State acquiesce in a decision of their own supreme court it may and often does happen that the court is not called on to reaffirm its opinion, because no one doubts or disputes its first ruling on the subject, and yet Congress is now asked not to regard as authority anything less than a line of well-considered cases.

DO STATE LAWS BECOME FEDERAL LAWS?

Again the majority report says:

Another suggestion in argument needs greater amplification than we can give it now, which is: that by adopting the machinery of the States to carry on Congressional elections this House stands in the nature of an appellate court to interpret these election laws so far as they relate to Congressional elections; that it ought not in this view to be bound by the decisions of the State courts at all, unless the reasons given by them are convincing to the judicial mind of the House while acting in the capacity of a court.

The suggestion made in argument was that the State election laws became Federal laws when Congressmen were elected under them, and therefore Congress had the same right to review the decision of a State court in construction of these laws that the Supreme Court of the United States had to review the decision of a State court on any question arising under the twenty-fifth section of the judiciary act. This was an ingenious suggestion, but it is completely refuted by the Supreme Court of the United States in *ex parte Siebold* (10 Otto). The court say, "The objection that the laws and regulations, the violation of which is made punishable by the act of Congress, are State laws and have not been adopted by Congress, is no sufficient answer to the power of Congress to impose punishment. It is true that Congress has not deemed it necessary to interfere with the duties of the ordinary officers of election, but has been content to leave them as prescribed by *State laws*." Again, "the paramount character of those made by Congress has the effect to supersede those made by the State, so far as the two are inconsistent, and no further." The great question in this case was whether Congress could make a law to punish a man for the violation of *State election laws* in Congressional elections, and the able opinion of the court would have been wholly unnecessary if the new theory now advanced were true that the State laws become Federal laws simply because Congressmen are elected under them. Such an idea is wholly repugnant to the Constitution, which expressly provides that the States may make laws for the election of Congressmen while Congress may make, alter, or amend them.

THE SHOESTRING DISTRICT.

There is no satisfactory result flowing from this contest. The public have been led to believe that there was 17,000 Republican majority in the sixth district of Mississippi, familiarly called the "shoestring district," being five hundred miles long and only forty miles wide, and yet the majority of this committee, after a thorough investigation, only claim a majority for contestant of three hundred and eighty-five votes. The counties of Claiborne, Quitman, Sharkey, Tunica, and Wilkinson are shown by the census to have 5,795 majority of colored over white voters and yet there is no complaint made by the contestant, and no contest over the votes in these counties, although they gave 1,762 majority for the sitting member. Again, the public have been led to believe that great frauds have been practiced in this district, and yet the only fraud now claimed by the majority report is a change of one hundred and ninety votes at Kingston, in Adams County.

There is no dispute about the vote in the counties of Claiborne, Quitman, Sharkey, Tunica, and Wilkinson, and the vote in these counties, as shown by the sworn bill in chancery of Mr. Lynch, is as follows:

| Counties. | Chalmers. | Lynch. | |
|---------------------|-----------|--------|--------------------|
| Claiborne | 1,061 | 288 | See Record, p. 10. |
| Quitman | 153 | 83 | " " |
| Sharkey | 484 | 175 | " " |
| Tunica | 239 | 506 | " " |
| Wilkinson | 1,691 | 814 | " " |
| Five counties | 3,628 | 1,866 | |

Majority for Chalmers, 1,762.

In the disputed counties the returns certified to the secretary of state are as follows :

| Counties. | Chalmers. | Lynch. | |
|------------------|-----------|--------|-----------------------|
| Adams | 1,387 | 898 | See Record, p. 13-14. |
| Bolivar | 301 | 979 | " " 14-15. |
| Cochran | 225 | 852 | " " 15-16. |
| Iraqena | 59 | 333 | " " 17-18. |
| Jefferson | 951 | 136 | " " 19-20. |
| Warren | 1,014 | 57 | " " 20-21. |
| Washington | 1,607 | 772 | " " 22-23. |
| | 5,544 | 3,527 | |

Majority for Chalmers, 2,017.

Total majority, 3,779.

If we follow the supreme court of Mississippi, and reject the marked ballots, Chalmers is elected by a large majority.

If we count the marked tickets rejected in Warren County, 2,029 for Lynch, and 20 for Chalmers; the Rodney box in Jefferson, which is admitted, 247 for Lynch, and 92 for Chalmers; the Stoneville box in Washington County, 315 for Lynch, and 60 for Chalmers; Deadman's Bend and Palestine, in Adams County; if we further change the vote at Kingston, as it is claimed by the contestant, giving him 190 votes, and take the same from contestee, the result is:

| | Lynch. | Chalmers. |
|-----------------------------------|-----------------|-----------|
| Returned vote | 5,393 | 9,172 |
| Add rejected votes, Warren..... | 2,029 | 20 |
| Rodney box in Jefferson..... | 247 | 92 |
| Stoneville, in Washington..... | 315 | 60 |
| Deadman's Bend, Adams County..... | 85 | 15 |
| Palestine, Adams County..... | 231 | 17 |
| | — | — |
| | 8,300 | 9,376 |
| Change Kingston box, adding..... | 190 Subtracting | 190 |
| | — | — |
| | 8,490 | 9,186 |
| | | 8,490 |
| Leaves majority for Chalmers..... | | 696 |

So that the contestant is clearly defeated, unless the certificates of the United States supervisors of elections and the certificates of clerks as to election returns over which they have no control and no power to certify are received as legal evidence. We therefore recommend the adoption of the following resolution:

Resolved, That John R. Lynch was not elected and is not entitled to a seat in the Forty-seventh Congress from the sixth district of Mississippi.
Resolved, That James R. Chalmers was elected and is entitled to his seat in the Forty-seventh Congress from the sixth district of Mississippi.

GIBSON AERTHERTON.
 S. W. MOULTON.
 L. H. DAVIS.

GUSTAVUS SESSINGHAUS vs. R. GRAHAM FROST.

THIRD CONGRESSIONAL DISTRICT OF MISSOURI.

Contestant alleges that the votes of a large number of the electors who offered to vote for him were illegally rejected by the judges of election, because their names were stricken off the registration list by the board of revision; because their names were misspelled or incorrectly numbered on the registration list; because some who had never registered or voted in Saint Louis registered only on the day of election, and because some who had never registered or voted in Saint Louis appeared at the proper polling places and offered to register and to vote for contestant, but the officers whose duty it was failed and refused to register them.

Contestant further alleges that a large number of ballots headed "Chronicle Selected Ticket," "Greenback Labor Ticket," and "Hancock Independent Ticket," containing his name for Representative in Congress were not counted, as being fraudulent and designed to mislead the voter.

That a large number of ballots were not counted for him because his given name was not printed thereon.

That a mistake was made in footing up the returns in one precinct by which a number of votes were lost to him, and a number added to contestee.

That a ballot made up of parts of two tickets, with only one name for each office, and that of contestant for Representative, was not counted.

Held, That neither the constitution of Missouri or any statute in force in Saint Louis made registration an absolute prerequisite or qualification to vote. The charter and ordinances of the city of Saint Louis provide for a system of registration, but do not in express terms make registration a prerequisite or qualification for voting.

the ordinance of the city being followed by the board of revision in striking off names, and by the election officers in refusing to receive ballots, and the constitution of Missouri having authorized the general assembly alone to enact a registration law, such ordinance was of no binding effect, and the votes of those who offered to vote and were refused must be counted as proven.

The tickets with different headings and the one made up of parts were legal and must be counted, and so must the tickets that had not the given name of contestant, the evidence showing that no other person by the name of Sessinghaus was a candidate at that election in that district for any office.

A mistake in the footing of returns being proven, such mistake is corrected to conform with the true vote.

The House adopted the majority report.

FEBRUARY 17, 1883.—* Mr. MILLER, from the Committee on Elections, submitted the following

R E P O R T:

The Committee on Elections, to whom was referred the contested election case of the third Congressional district of Missouri, having had the same under consideration, beg leave to report :

As appears from the returns of the election held in the third Congressional district of Missouri on the 2d day of November, 1880, R. Graham Frost (contestee) received 9,487 votes; Gustavus Sessinghaus (contester) received 9,290 votes, and D. O. Connell (Greenback) received 266 votes.

Mr. Frost having a plurality of 197 votes on the face of the returns was awarded the certificate of election.

Within the statutory period after the issue of the certificate of election, Mr. Sessinghaus caused to be served on Mr. Frost a notice that he would contest the seat held by the latter as Representative in the Forty-seventh Congress from the third Congressional district, specifying particularly the grounds upon which such contest would be maintained.

An answer was shortly after filed by Mr. Frost, the contestee herein.

Testimony was then taken on the part of the contester and contestee within the ninety days allowed by the act of Congress.

At the time of the above election the city of Saint Louis was partially divided into three Congressional districts. The third district was composed of one township in Saint Louis County and of the northern part of the city of Saint Louis.

The constitution of the State adopted in 1875, in prescribing the qualifications of voters, reads as follows:

Every male citizen of the United States, and every male person of foreign birth who may have declared his intention to become a citizen of the United States, according to law, not less than one year, nor more than five years before he offers to vote, who is over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all elections of the people:

1st. He shall have resided in the State one year immediately preceding the election at which he offers to vote.

NOTE.—Hon. James M. Ritchie, of Ohio, reported this case from the subcommittee, having same in charge, to the full committee. At his request Mr. Miller was designated to report case to the House. In doing so the latter has incorporated largely in this report the exhaustive and able report of Mr. Ritchie.

2d. He shall have resided in the county, city, or town where he shall offer to vote at least sixty days immediately preceding the election.

By this same constitution, article 9, section 20 *et seq.*, power was given the citizens of Saint Louis to frame a charter not inconsistent with any provision of the said constitution for the government of that city.

Article 8, section 5, and article 9, section 7, of said constitution are as follows, viz:

ART. 8, SEC. 5. The general assembly shall provide by law for the registration of all voters in cities and counties having a population of more than 100,000 inhabitants, and may provide for such registration in cities having a population exceeding 25,000 inhabitants and not exceeding 100,000, but not otherwise.

ART. 9, SEC. 7. The general assembly shall provide by general laws for the organization and classification of cities and towns. The number of such classes shall not exceed four, and the power of each class shall be defined by general laws, so that all such municipal corporations of the same class shall possess the same powers and be subject to the same restrictions. The general assembly shall also make provision by general law whereby any city, town, or village existing by virtue of any special or local law may elect to become subject to and be governed by the general laws relating to such corporations.

These are all the provisions of the Missouri constitution bearing on the subject.

In pursuance of section 7, article 9, *supra*, the general assembly of Missouri, in 1877, enacted as follows, viz:

SEC. 4380. All cities and towns in this State containing 100,000 inhabitants or more shall be cities of the first class.

SEC. 4385. Any city or town in this State existing by virtue of the present general law, or by any local or special law, may elect to become a city of the class to which its population would entitle it under the provisions of this article, by passing an ordinance or proposition, and submitting the same to the legal voters of such city or town at an election to be held for that purpose, not less than twenty nor more than thirty days after the passage of such ordinance or proposition; and if a majority of such voters, voting at such election, shall ratify such ordinance or proposition, the mayor or chief officer of such city or town shall issue his proclamation declaring the result of such election, and thereafter such city or town shall, by virtue of such vote, be incorporated under the provisions of the general law provided for the government of the class to which such city belongs, which class shall be determined by the last census taken, whether State or national.

SEC. 4389. Any city of the first class in this State may become a body corporate, under the provisions of this article, in the manner provided by law, &c.

Then follow the provisions for governing cities of the first class, and for registration and elections therein.

Saint Louis never elected to accept the provisions of this law, and was not governed or controlled thereby, nor were its provisions concerning registration of any force or effect in said city.

There was also another statute, which did apply to Saint Louis, viz:

AN ACT to provide for the exercise of the right of voting by persons who have failed to register.

Be it enacted by the general assembly of the State of Missouri as follows:

SECTION 1. In all State, county, and municipal elections hereafter held in any city of this State having a population of one hundred thousand inhabitants or more, no person shall be deprived of the right of voting at such election by reason of having failed to register: *Provided*, That, in all cities where registration is required by law, the party offering to vote, but who from any cause has failed to register before he offers to vote, shall be, on the day of such election, registered by a special registrar of election, appointed by the judges of election for that purpose at each precinct, as a qualified voter, in a book to be kept for that purpose; and the ballot of such voter shall be received and counted at such election; and such registrar shall return to the register of voters of such city the list of such voters so registered within ten days after such election, provided the said registrars shall be sworn as provided for the recorder of voters and the books shall contain the written or printed oath as required in the regular registration books.

Approved March 30, 1877.

The Constitution of the United States, article 1, section 4, is as follows, viz:

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may, at any time, by law, make or alter such regulations except as to the places of choosing Senators.

The charter adopted by Saint Louis in 1876, in pursuance of the constitution of Missouri, article 9, sections 20 *et seq.*, provided for registration. It was, however, never adopted, ratified, or acted upon in any way by the general assembly of Missouri.

The municipal assembly of Saint Louis in 1878 passed a city ordinance providing for registration in said city, section 11 of which ordinance is as follows, viz:

Sec. 11. The mayor shall appoint a board of revision, consisting of one reputable citizen from each ward in the city who shall possess the qualifications of a member of the house of delegates, whose duty it shall be to meet with the recorder of voters, at his office, twenty days before each general, State, or municipal election, for the purpose of examining the registration, and making and noting corrections therein as may be rendered necessary by their knowledge of errors committed, or by competent testimony heard before the board; a majority of said board shall be necessary to do business, and the mayor shall be ex officio president thereof. They shall strike from the registration, by a majority vote, names of persons who have removed from the election district for which they registered, or who have died, and shall note the fact opposite the name of any person charged with having registered in a wrong name, or who for any reason is not entitled to registration under the provisions of this ordinance, which person shall be challenged by the judges of election when presenting himself to vote, and rejected unless he satisfy said judges that he was entitled to register, and said board shall also place on said books the names of such persons as in their judgment have been improperly rejected by the recorder of voters. They shall sit from day to day, not exceeding ten days, until they have completed their labors, and their proceedings shall be printed daily in the paper doing the city printing. They shall each be allowed the sum of three dollars per day for their services.

This is the only section bearing on the question at issue. It differs somewhat from both the city charter and the State statute governing those cities which elected to become cities of the first class.

The foregoing are substantially all the enactments controlling this case save the United States statutes.

This city ordinance was adopted subsequently to any act of the general assembly. It contains forty-odd sections, and prescribed an entire scheme of registration and election for Saint Louis, and was the only law by which registration was had in said city.

These views are supported by Counsellor Bell, of said city, at page 1814 of Record.

On investigation we find that the various so-called sections of the statutes of Missouri, cited in the report of the minority of this committee, concerning the application of the election laws of the State, were placed there by the committee appointed by the general assembly of Missouri to revise the statutes in 1879, and that the same lack the ratification or approval of that assembly.

I.

The evidence of the following witnesses, who testified for the contestant, and which is absolutely uncontradicted, shows that they, each and every one of them, were qualified voters under the laws of the State of Missouri, and entitled to vote at that election; that each and every one of them had previous to the election herein complied with all the provisions of the registration law, and that they had been by the proper officer duly registered as legal voters for their respective pre-

cincts; that preceding the election they were improperly, wrongfully and illegally stricken off the registration list by the board of revisors of the city of Saint Louis; that on the day of election they each & every one of them went to their respective and proper polling precincts in said city and offered to cast their ballots for contestant for Representative in Congress from said district, but the judges of election, not finding their names on the registration list, would not receive and count their votes, and their votes never have been counted, viz:

Record page.

- 510. Aerschbeck, Sam.
- 861. Alvord, Wm. B.
- 1234. Bailey, Peter
- 491. Ball, George
- 615. Bartlett, Geo.
- 681. Bell, Wm.
- 750. Bethge, August
- 462. Betts, Henry
- 560. Bloss, Jno. F.
- 863. Boothe, F.
- 459. Broeder, Casper H.
- 578. Brown, Ben.
- 866. Brown, John
- 918. Bruder, Jno. G.
- 970. Bush, Robert
- 481. Boekemeier, Henry
- 1008. Cheatam, Ike
- 932. Clayton, John
- 608. Coleman, Henry
- 1595. Coleman, Robert
- 452. Corum, Henry C.
- 626. Cousins, Jno.
- 359. Cox, Chas.
- 617. Crawford, Antoine
- 1029. Cummings, Edw.
- 437. Cummings, Ed.
- 833. Davis, Clark
- 550. Dodd, Willis
- 1044. Douglass, Thomas
- 530. Dugles, Geo.
- 618. Dietring, C. H.
- 790. Ermantraut, Henry
- 624. Edwards, John
- 1043. Emery, Jonathan
- 629. Fissman, Henry
- 495. Fogler, Frank
- 955. Frening, Louis
- 596. Gardner, Woodford
- 728. Giesecker, F. W.
- 654. Goodin, Jno.
- 585. Grassmuck, Peter
- 652. Green, Cato
- 450. Green, Chas.
- 1393. Green, Edw.
- 447. Green, Silas
- 460. Hale, Jefferson

Record page.

- 1669. Hamig, H. F.
- 974. Harder, Ulrich
- 453. Hartman, Jno. F.
- 636. Hawkins, Christian
- 1125. Hayes, Isaac
- 1173. Henderson, Tony
- 1056. Hendricks, Spencer.
- 941. Hennerla, A. B.
- 498. Herdler, Carl
- 493. Hilf, Christ.
- 895. Horstbrink, Louis
- 814. Howard, Dinkey
- 500. Howard, Wesley
- 680. Howarth, Fred.
- 431. Howell, L. M.
- 1060. Hull, Morris
- 743. Johanningmeyer, Henry
- 160. Johnson, Alfred
- 1532. Johnson, Geo.
- 1165. Johnson, John
- 623. Johnson, Merritt
- 1073. Johnson, Pat
- 987. Johnson, Simeon
- 631. Jenkins, Chas.
- 757. Koboldt, Henry
- 809. Kraemer, C. H.
- 546. Landwehr, J. H.
- 1586. Lang, Geo.
- 599. Larkins, Peter
- 658. Leeker, J. F.
- 521. Lewis, Jno.
- 413. Lincoln, Jas.
- 842. Lofton, Lewis
- 1427. McGee, Jno.
- 1377. Marshall, Henry
- 609. Martin, Jackson
- 526. Maschmeier, Geo.
- 1210. Maze, Daniel
- 504. McIlvanie, Geo. R.
- 745. Meier, Henry
- 1058. Mestemacher, Chas.
- 440. Meyer, Henry W.
- 637. Miller, Wm.
- 929. Mouroe, Jos.
- 822. Maxey, T.
- 747. Mueller, Chas. P.

Record page.

| | |
|-------------------|----------------------------|
| swell, John | 377. Taylor, Edw. |
| an, Christ. | 430. Taylor, Jas. |
| wich, Christ. | 600. Terrel, Wm. |
| sy, Wm. | 691. Thomas, Chas. |
| ; Bob | 676. Thompson, J. M. |
| er, Edmund | 847 and 851. Trebus, Chas. |
| Chas. | 1839. Turner, Frank |
| , C. A. | 787. Turner, Osborn |
| t, Dan'l | 444. Tyler, Albert |
| ng, Wm. | 586. Ulmer, Peter |
| lhuber, A. | 1154. Vahl, Fred. |
| Geo. | 605. Volk, Jacob |
| len, Frank | 875. Waschausen, Aug. |
| eller, Fred., sr. | 1672. Washington, Robt. |
| eller, Fred., jr. | 839. Washington, Geo. |
| tgen, P. | 852. Washington, Wm. |
| er, Jas. | 885. Webster, Dan. |
| ltz, Henry | 1501. Wesley, Aleck |
| s, Henry | 425. White, Lewis |
| on, Abner | 390. Willard, Dr. Jno. |
| i, David | 405. Williams, Anthony |
| i, August | 835. Williams, Chas. |
| , Chas. | 733. Williams, Joe |
| ger, Wm. | 1078. Williams, Thos. |
| o, Fred. | 1087. Wilson, Josiah |
| tor, Jas. R. | 1184. Winter, Heinrich |
| k, Matt | 943. Winther, Chas. T. |
| er, Beverly | 588. Williams, Edw. |
| e, Henry | 992. Zieres, Jno. |
| t, Henry | Total, 155. |

further that the board of revision, by whom the above voters were off the registration list, met on each of nine days immediately preceding the election, the first day only to organize and passing resolution, viz :

that when a member of the board of revision presents a list of persons not on the registration list furnished him by the recorder of voters with dead, removed, not house, duplicate, not a citizen, or any other word or phrase to indicate he is not entitled to vote, his name being on the books of the recorder, the board shall take immediate action on such names and instruct the recorder to erase such names from the registered list of voters in his office.

resolution that board delegated its exclusive power to each members, and in advance agreed that whatsoever names any members presented to be stricken off, should be stricken off without knowledge or testimony. And the recorder of voters, who was clerk of that board, swears that the business was done as follows:

called Ward one; when the reviser from that ward sent names, which was not even read, the clerk merely stating there were names on the list, when, by virtue of the above resolution, no further action by the board, they were stricken off, no member of the board but he from the First ward ever hearing the name or knowing what names had been stricken off; when Ward two was called, and so on through the whole twenty-eight wards (Record, lis. 35—25

page 131). This was also proved by nearly all the members of the board called by the contestee as witnesses in his behalf. (See Record, pages 1792, 1824, 1825, and 1844.) It is undisputed. The board sat from one to two hours each of the eight days, and in that time struck off over 12,000 names from a registration of about 60,000.

This board was composed of twenty-four Democrats and four Republicans. The record shows that many of these twenty-eight revisers delegated their duties of purging the registry lists to unauthorized and unsworn parties—(Record, 1786-'7, 1793, 1800, 1836, and 1850)—in many instances persons wholly unknown to them, who were sent to them by the Democratic central committee. (See same pages of the Record.) The fact also appears that the reviser for the Fourth ward of this district, that ward in which most of the above disfranchised voters lived, left his entire work of revision to irresponsible deputies, whose work was sent in, and the names reported by them were stricken from the list of voters in the manner above described.

The testimony of one Michael Burke shows that he was one of these unsworn deputies, and reveals the frauds by which Republicans were intentionally stricken off the lists. He also swears—and his evidence is wholly uncontradicted—that there was an understanding and agreement between all these deputies—that they should act together in practicing these frauds. (See Record, page 71 and following.)

It will be borne in mind that the law not only does not recognize these deputies, but specifically provides that this work of determining the qualifications of voters should be done by these revisers, sitting as a court and acting judicially on "*actual knowledge*" or "*competent testimony, and by a majority vote.*"

The testimony shows that all of the above 155 men were legal and qualified voters, many of them being old residents, and that they did all in their power to entitle them to vote.

We hold that their votes should now be counted by the House. The said voters had done everything the law required of them; they had exhausted their remedy; they had registered and gone to the polls and offered to vote, but their names having been stricken off they were not allowed to vote.

The principle is well established and was adopted by this committee in the case of Bisbee *vs.* Finley (present Congress), that where judges of election improperly refuse a qualified voter the right to vote, his vote will be counted here. We submit the reason of that rule will apply as well to this case, where the voter has done everything in his power and the primary wrongful act was committed by the registration officers.

McCrary on Elections, sections 10, 11, and 383, fully sustains this view in the following language:

A case may occur where a portion of the legal voters have, without their fault and in spite of due diligence on their part, been denied the privilege of registration. In such a case, if the voter was otherwise qualified and is clearly shown to have performed all the acts required of him by the law, and to have been denied registration by the wrongful act of the registering officer, it would seem a very unjust thing to deny him the right to vote. In elections for State officers, however, under a constitution or statute which imperatively requires registration as a qualification for voting, it may be that the voter's only remedy would be found in an action against the registration officer for damages. (See also sections 11 and 383.)

It will be observed that Judge McCrary, after stating the general doctrine, says that—

In elections for State officers, however, under a constitution or statute which imper-

quires registration as a qualification for voting, it may be that the voter's duty would be found in an action against the registration officer.

refers exclusively to State officers, while the office for which it is directed to count these votes is not a State office—that the United Constitution has given this body full control over the question who are its members; and in the State of Missouri neither the constitution nor any statute in force in Saint Louis makes registration an imperative prerequisite or qualification. (See constitution 1875, heretofore cited.)

The old constitution of 1865 made registration a qualification, both in positive and negative language. (See constitution 1865, article 2, section 18.)

The constitution of 1875 only requires that to be a voter a man must be twenty-one years of age, a citizen of the United States, and a voter of the State for one year.

There was there any statute in existence at the time of this election applied to Saint Louis, which, either in express terms or by implication, made registration an imperative prerequisite or qualification. The charter of ordinances of the city of Saint Louis, adopted by its council, as shown above, provided for a system of registration heretofore mentioned, but it nowhere in express terms, in enumerating the qualifications of voters, makes registration a prerequisite or qualification for voters. And had it done so we hold that it would have been a violation of the part of the constitution which provides for the qualifications of voters, in this, that it would have made an additional qualification.

It should be observed that as Saint Louis never, directly or by implication, elected to be governed by the statute providing for the government of cities of the first class, the provisions therein concerning registration do not apply to, nor do they control, said city.

ordinance, instead of the charter of the city, being followed in the matter of the board of revision, it having been appointed twenty days or thirty days before the election, we find that neither the ordinance nor statute had any binding effect on said board.

The constitution of the United States having declared that the legislatures of the several States shall provide for choosing members of Congress, and the constitution of Missouri having authorized the general assembly, and that alone, to enact a registration law, we hold that such ordinance has no binding force or effect, and is invalid.

We therefore rely upon the language of McCrary, section 11, that—

In the absence of any positive law making registration imperative as a qualification, it is a very plain proposition that the wrongful refusal of a registering officer to register a legal voter who has complied with the law and applies for registration ought not to disfranchise such voter. The offer to register in such a case is equivalent to registration. This would be held to be the law upon the well-settled principle that the offer to perform an act which depends for its performance upon the act of another person, who wrongfully refuses to act, is equivalent to its performance.

Conceding (which we do not in this case) that the city ordinance requiring registration was constitutionally and legally enacted, and was applicable to this election, we contend that these 155 voters could still be counted, and for the following reasons: The oath prescribed for, and taken by, the judges of election prevents them from hearing or determining the case of any voter whose name is not on their list; therefore, as to that class of voters, they are not judges of election. The law in that case has provided another set of judges, whose duty it is to hear competent testimony concerning

the case of each and every man whose name is suggested by any one should be stricken off, and after judicially hearing the case, they shall, by a majority vote, determine whether that man is a voter or not.

So we say that if the judges of election could not receive the votes of these men they are not the judges of their qualifications to vote in any sense, their place for that purpose being filled by the board of revision. We hence conclude that if the only officers recognized by the city charter who had a right to judge of the qualifications of these 155 men have improperly, wrongfully, and fraudulently denied them the right to vote that this House should remedy that wrong and count their votes for him whose name was on their ballots.

Furthermore, these votes should be counted on another ground, following a well-established principle of law.

The proof in this case shows that the board of revision by whom the above voters were disfranchised acted at the outset and throughout their entire proceedings in absolute violation of not only the spirit but the letter of the law which gave them authority. The ordinance explicitly says that this board shall meet—

For the purpose of examining the registration and making and noting corrections therein as may be rendered necessary by either their knowledge of errors committed or by competent testimony heard before the board, a majority of said board shall be necessary to do business.

By a resolution adopted at the beginning (heretofore cited) they declared they would neither hear testimony nor act upon the knowledge of the board. Thereafter names of voters were stricken off the list without even being read to the board, and merely upon the recommendation of an individual member, who, in many cases, as the proof shows, adopted without question, knowledge, or examination the reports of his unsworn and unauthorized deputies.

When it is borne in mind that no actual notice was given to the voter thus stricken from the list, and that, even if he had such notice, there existed no remedy or law by which he could be reinstated, the necessity of holding this board to a strict execution of its powers will be apparent.

It will be observed that the ordinance conferred upon the board of revision the power to examine and revise the registration list prepared by the recorder of voters, and making and noting corrections therein, to correct his errors or omissions, but the law nowhere empowered them to correct or revise their own.

Now, it is a well-settled doctrine of law that as to courts not of record and other bodies having judicial functions no presumptions arise as to jurisdiction or the regularity of their proceedings, and that any judgment rendered by such court or body not in strict conformity with the law is void. (See Freeman on Judgments.)

This board of revision, as shown by the record, acted from the beginning to the end in utter disregard and violation of the law.

This ordinance gives the board power to strike from the registry lists by a majority vote, and either on the knowledge of the board officially or by competent testimony heard before the board, the names of those only "who have removed from the election district for which they registered, or who have died." The resolution divested the board of all its functions; it gave each member individually the right to not only strike off the dead and removed, but it gave him the right to strike off those *not found*; it gave him the right to write "vacant house" against a man's name, and that man was disfranchised; it gave him the right to strike off duplicate names; it gave him the right to strike

off all who were in his judgment not citizens ; and, lastly, it gave him the right to strike off any one whom he thought, for any reason, ought not to vote—and to do all this without any testimony, without any knowledge as to whether it was right, and without any notice to him whose name he struck off. And then the board beforehand sanctioned all this; told each reviser to do whatever he would ; it, as a board, would stamp it as the act of the board.

It will be seen by this ordinance that this board, besides striking off the names of those who had removed out of the precinct where they lived when they registered, and the names of those who had died, were required "to note the fact opposite the name of any person charged with having registered in a wrong name, or who, for any reason, is not entitled to registration under the provisions of this ordinance, which person shall be challenged by the judges of election when presenting himself to vote, and rejected unless he satisfy said judges that he was entitled to register." This board was precluded from striking off the names of these persons. Its only duty was to make note against them, and then the judges of election were to judicially examine into the qualifications of these voters. So the board not only violated and defied the law, but, by its acts, it prevented the judges of election from examining and determining the questions which the ordinance explicitly referred to them. If this board had been a court of general jurisdiction, even then its acts would have been absolutely void because of its failure to proceed in accordance with law.

We therefore hold that the action of this board in striking off the names of the above voters was illegal and absolutely void and of the same effect as if done by any unauthorized party.

Again, the proof shows that the action of the board of revision from its inception operated as a fraud upon all who were improperly stricken off by them, and that there was actual fraud on the part of some of those to whom was improperly delegated the duties and functions of the whole board, which fraud resulted in striking off and disfranchisement of these voters.

This opportunity for fraud is evidenced by the illegal resolution adopted, the manner in which the board did its work, and by the employment of unauthorized and unsworn deputies.

The actual fraud is shown in the uncontradicted testimony of Michael Burke, one of the above deputies in the Fourth ward of this Congressional district, who unblushingly tells how he struck off of the list Republican voters ; of his understanding that he was hired for that purpose, and agreement with other deputies to do the same work in their wards ; in the fact that of the 12,000 names stricken off—the contestee after keeping in a conspicuous place in the leading Democratic paper of St. Louis an advertisement for all Democrats who had been wrongfully stricken from the registration list to appear and give their testimony—only obtained three who were qualified voters ; in the fact that in numerous instances, as shown by the testimony, some members of a family were stricken off said list and members of the same family left on, and in each of such instances the Republicans were stricken off and the Democrats left on ; in the fact that five months after the election herein, as is shown by the testimony, another election was held in Saint Louis, before which a presumably fair registration was had, and at which every Republican candidate was elected by a very large majority, whereas at his election the Democratic candidates for President and governor each received a majority.

We therefore hold that, as fraud vitiates all things, the frauds above enumerated vitiated the action of said board of revisers.

For each and all these reasons, and because it seems just and right that where a legally qualified voter has done all that the law requires of him in order to vote, but he has been deprived of the privilege by the default, neglect, or fraud of any officer of election, his vote should be counted, and because it seems to us that these voters were, in the eyes of the law, on the list of voters furnished the judges of election (having been stricken off by illegality and fraud), we hold that these 155 votes should now be counted for contestant.

II.

The evidence shows that the following were legal voters of the State of Missouri and city of Saint Louis, and entitled to vote at the election in the third Congressional district of Missouri on the 2d day of November, 1880; that they had complied with the registration law of said city, having previous to the election registered their names before the proper officer; that on the day of election they offered their ballots at their respective and proper polling precincts in said city, and said ballots being for contestant for Representative in Congress from the third Congressional district of Missouri; that their names were, each and every one of them, found on the poll-list at the precincts where they offered to vote, but for various trivial and insignificant reasons, such as, for instance, the misspelling of names or the incorrectness of numbers, and, in some instances, for no reasons whatever, the judges refused to receive their votes, and they were not received or counted, viz :

Record page.

- 420. Baker, Lee
- 506. Bierlin, John
- 834. Buttram, Louis
- 1041. Caeser, Philip
- 1032. Cheatham, William
- 761. Clark, Calvin
- 903. Fields, John
- 518. Garrett, John
- 816. Geiger, George H.
- 976. Gray, Samuel
- 648. Hatz, Sebastear
- 848. Heitert, H. C.
- 1240. Henderson, Isaac
- 753. Hensieck, Henry
- 591. Hohnnan, Fred.
- 564. Howard, Henry
- 771. Humes, Ben.
- 570. Hyde, Jacob

Record page.

- 1703. Inderman, Henry
 - 644. Lammers, Herman
 - 584. Lott, S. W.
 - 663. Merkel, John
 - 661. Moppel, A. F.
 - 573. Moore, London
 - 739. Page, Moses
 - 763. Price, John
 - 924. Reed, William
 - 765. Rohne, Herman
 - 1213. Scott, J. E.
 - 497. Small, John, jr.
 - 554. Springmyer, H.
 - 791. Stoltz, Matthew
 - 983. Striker, William
 - 915. Twellman, H.
 - 601. Wischmeyer, C. H.
- Total, 35.

We therefore conclude that these thirty-five votes should be counted for contestant, as the proof shows indisputably that the judges of election improperly refused to receive and count them.

III.

The evidence shows that at the date of election herein the following were legal and qualified voters of the State of Missouri, city of Saint

hird Congressional district; that they had never registered
in the city of Saint Louis; that on the day of election they
voted at the polls of their respective and proper precincts by
the officer duly appointed for that purpose; that they offered
as for contestant for Representative in Congress from the
Congressional district of Missouri, but the judges refused to re-
count their votes, and they never have been counted, viz:

| | Record page. |
|----------------|------------------------|
| man, Chas. | 507. Mohr, Wm. |
| siecker, Henry | 497. Springmeyer, G. |
| , T. J. | 1133. Stein, John, jr. |
| ll, Alfred | Total, 8. |
| er, C. H. | |

the reasons assigned above, we hold that these ballots should
be counted for contestant.

IV.

nce shows that the following were at the date of the elec-
toral and qualified voters of the State of Missouri and city
of St. Louis, and said third Congressional district; that they never
voted or voted in the city of Saint Louis; that on the day of
the election they offered at their respective and proper polling precincts,
the officers appointed to register voters, and receive and
count their votes, to register and vote for contestant for Representative
for the third Congressional district of Missouri, but the
officers failed in the performance of their duty it was failed and refused to register them or to re-
count their ballots, and their ballots were not received and
counted by the judges of election, and they never have been counted:

| | Record page. |
|-----------------|-------------------------|
| kle, Lazarus | 820. Godejohn, F. W. |
| s, Alex. | 487. Johnson, Joseph |
| l, Lemuel | 1281. Gates, Thos. |
| Chas. | 465. Greenlow, Chas. |
| ille, John | 1588. Haines, Wm. |
| Dempsey | 873. Harriss, George |
| er, James | 1054. Harriss, Leighton |
| ann, Henry | 1046. Hawkins, Dan'l |
| , Wm. | 1017. Holmes, Henry |
| , Charles | 868. Johnson, Edward |
| ell, Edward | 907. Johnson, James |
| ; Harris. | 1529. Johnson, Jos. E. |
| 6. Clark, Jerry | 1506. Johnson, Jos. H. |
| , Dave | 807. Johnson, Robert |
| Edward | 427. Jones, J. J. |
| ins, Henry | 1386. Jones, Joseph |
| Charles | 777. Jackson, Edward |
| Vallace | 1212. Jackson, Samuel |
| l, James | 971. Jay, James |
| n, Jackson | 696. Johnson, Charles |
| ds, Jeff. | 553. Krœger, Henry |
| , Henry | 1049. Lee, Lewis |
| lin, Henry | 432. Link, Frederick |

Record page.

- 1138. Lyons, Jerry
- 844. Mast, Constantine
- 1379. McCoy, Samuel
- 1097. McDavis, Butler
- 443. Mitchell, James
- 781. Mitchell, Geo.
- 1075. Mitchell, Harrison
- 543. Mueller, Gustave
- 909. Peterson, Beverly
- 542. Pfeifer, Adolph
- 1086. Polk, James K.
- 828. Powell, Isaac
- 865. Price, Bob
- 1081. Riley, Peter
- 1062. Robinson, Wm.
- 1163. Robinson, Sam.
- 968. Randolph, Alfred
- 534. Redding, T. A.
- 497. Scott, Sam.
- 966. Scott, Sam.
- 1094. Simpson, Hilliard

Record page.

- 1646. Sims, Charles
- 1067. Smith, John
- 893. Smith, Joseph
- 1252. Taylor, Clark
- 720. Taylor, Richard
- 910. Taylor, Zachery
- 1079. Terrell, Henry
- 1085. Thomas, George
- 1018. Thomas, George
- 980. Thomas, Monroe
- 1136. Thomas, Nelson
- 877. Turner, Joseph
- 1180. Vogt, Christ.
- 1013. Wallace, Wm. A.
- 1705. West, William
- 1279. Wilkeson, Thos.
- 1276. Gardener, Chas.
- 699. Williams, Wm.
- 513. Williams, Wm.

Total, 86.

By virtue of the law heretofore referred to, providing for registration on election day, and upon the same ground as leads us to count votes of those wrongfully stricken from the list, these 86 men have been registered and permitted to vote; and because the officers whose duty it was to pass upon their qualifications wrongfully and gally denied them their right of suffrage, and because the said officers had done all that the law required of them, they should now have their votes counted.

V.

At pages 612, 668, 870, 674, 540, 759, 783, 620, 1157, 1228 of this volume will be found the evidence showing that there were 23 ballots for contestant, but not counted, having this caption, viz, "Chosen Selected Ticket," a ticket made up of names of persons on both Republican and Democratic regular tickets. It was not in the language of the law (see page 1681) a ticket designed to deceive the voter, but showed plainly what it was, viz, a ticket selected by the Chronical independent daily newspaper published in Saint Louis (see pp. 1681-2). This ticket had contestant's name on it for Congress from this district, and was, in some of the precincts, thrown out by the judges and not counted.

The supreme court of Missouri, in the case of *Turner vs. Dr. Moore*, 285, construed this statute as follows:

This is a proceeding instituted in the county court of Carroll County, concerning the election of defendant as recorder of deeds of said county. The court quashed the notice of contest on the motion of defendant, from which action defendant appealed to the circuit court, where upon a trial *de novo* judgment was rendered in his favor, defendant, the notice of contest quashed, and the proceedings dismissed, from which plaintiff has appealed to this court.

The only ground for contest alleged in the notice is that all the ballots cast for defendant, at the election which was held on the 5th day of November, 1860, were fraudulent and void, because the caption of said ballot contained the words "Republican, Independent, Greenback." The following is the form of the ballot: "State and county officers: 'Republican, Independent, Greenback; supreme judge, Alexander F. Denney,' &c."

he claim that the ballots cast for defendant, of which the foregoing is a type, were fraudulent and void, is based upon section 1, acts of 1875, p. 15, which is as follows: Each ballot may bear a plain written or printed caption thereon, composed of not more than three words, expressing its political character, but on all such ballots the caption or head-lines shall not in any manner be designed to mislead the voter as to the name or names thereunder. Any ballot not conforming to the provisions of this act shall be considered fraudulent, and the same shall not be counted."

We cannot, from the mere face of the ballot, declare, as a matter of law, that the words used in the caption were, in any manner, designed to mislead the voter as to the name or names thereunder. The words employed would indicate to the voter that he would find among those to be voted for Republicans, Greenbackers, and Independents, or persons who were candidates without party indorsement. We think the evident purpose of the legislature in the above enactment was to prevent one political party from using, as a caption to its ballots, the name of any other political party from mentioned in the caption. A ballot with a caption using the words "The Republican Ticket," which contains only the names of persons who represented the Democratic ticket, would fall within the class of ballots interdicted by the law.

The design of the statute is to prohibit the use of any words in the caption to a ballot which do not truly indicate the political character or party affiliation of the persons to be voted for, and any ballot which represents by the words used in the caption that it is the ticket of one party, when in truth and in fact the persons whose names are contained in the body of the ballot represent another and different party, under the statute fraudulent and void.

Under this and similar decisions, it seems to us there can be no doubt that contestant is entitled to have counted for him these 23 votes.

VI.

Evidence on pages 952 and 897 of the Record, which is uncontradicted, will be found, showing that 10 votes cast for contestant were thrown out and not counted by the judges, merely upon the ground that the contestant's given name was not on the ballots. The proof shows that another man by the name of Sessinghaus was a candidate at that election in that district for any office.

Hence we follow the unbroken chain of authorities as cited by McCarty, and hold that these 10 votes should be counted for contestant.

VII.

At one precinct in the said district it appears from the evidence (page 952 of Record), there were cast by legally qualified voters 15 ballots bearing the caption "Greenback Labor Ticket," but with the nominee of that party for Congress scratched out in pencil and the name of the contestant inserted, none of which ballots were counted by the judges at the election.

The evidence is wholly uncontradicted. We think the above votes should be counted for contestant, the intention of the voters being plain, all the ballots being legal.

VIII.

In precinct 148 the testimony shows that the board organized under law to foot up returns made by the judges of election counted for contestant 141 and contestee 58, that appearing to be the figures on the ledger book of that precinct.

The undisputed positive testimony of a majority of the officers of election at that precinct is that contestant received 149 votes and contestee 52, and that those were the figures certified to and returned by the judges. The contestee called no witnesses to disprove this testimony, and if it had been false it could easily have been shown. We

therefore conclude either that a mistake was made or the figures were intentionally changed after leaving the hands of the judges, and that in either event it should be corrected. This adds 8 votes to contestant and takes 6 from contestee. (See Record, pages 1748, 674-'5, 823, and 668-'9.)

IX.

There was also voted at that election a ticket headed "Hancock Independent Ticket," upon which the name of contestee was printed but scratched out, and contestant's name inserted in pencil. This ticket was thrown out by the judges. (See pages 779 and 791.) It seems plain that it should be counted for contestant.

X.

At precinct number 74 a ballot was cast (as shown by the evidence page 985) which was made up of the tickets of the two parties, cut in the middle and pasted together, thus making a complete ticket with only one name thereon for each office. It had on it the name of contestant for Congress. This ballot was thrown out and not counted by the judges. We think it should be counted for him. The voter evidently knew what he was about, and it was his privilege to vote for whom he pleased.

XI.

As to precinct No. 39 the contestant urged persistently, and introduced much testimony to support his position, that this precinct should be thrown out; but we are constrained to differ with him. We find that the evidence of intimidation hardly comes up to the standard provided by the precedents cited by McCrary, and hence we conclude that it must stand. We find, however, that twenty men (all colored) who were qualified and legal voters, and duly registered, and who had done all that the law required of them, who were entitled to vote at that poll, went there and offered to vote, but were refused for various trivial reasons, many of them being frightened by abuse and driven from the poll.

The following is a list of the above—all of whom offered to vote for contestant:

Record page.

368. Adams, Wm.
213. Ashby, Sanford
259. Bailey, Joseph
183. Batten, Alex.
209. Bell, Joseph
264. Bingham, S. S.
284. Brown, John
308. Brown, Edward
226. Donan, Wm.
356. Foster, Chas.
Total, 20.

Record page.

177. Harris, Walter.
255. Lee, Wilson
262. Leland, Geo.
175. Mack, Stuart
372. Meredith, Henry
158. Rollins, Cain
202. Smith, John
360. Thomas, Ben.
367. Williams, Lewis
139. Windom, Tom

We submit that the above should be counted for contestant.

XII.

It is admitted by contestee, and the proof is positive and uncontradicted, that a minor, Louis Hain, cast his vote for contestee, and that it was so counted. We therefore take one vote from contestee. (See Record, pages 1232 and 1754.)

XIII.

As to the charge made by the contestee that the testimony had been mutilated by counsel for contestant, we say that there is not the slightest ground for the allegation. (See the testimony of the notary who took the whole testimony in the case. He was a stenographer as well as a notary.).

By Mr. MILLER:

Q. How long have you been a short-hand writer?—A. I began the study of short-hand in the fall of 1868. I wrote short-hand for the Saint Louis Mutual Life Insurance Company from 1872, continuing from that time on till I got into the business of reporting.

Q. Before you forwarded the long-hand notes of this testimony to Washington, did you compare each sheet of it, as forwarded, with your original stenographic notes?—A. Yes, sir; every sheet.

Q. After you transcribed the short-hand notes of the testimony of contestant into long-hand, was it out of your possession and in the possession of Mr. Metcalfe for revision?—A. I will have to explain that, for the simple reason that I did not write them. My agent, of course, took the notes from me and wrote them out. But after the transcript came back into my hands, and after I made the examination from my notes, page after page, signed and sealed each day, they never again left my hands for one moment until they got into the House.

Q. That is the transcript?—A. The transcript of my short-hand notes taken in the case.

Q. After the transcript had been made by you or your agents, you permitted it to go into the hands of Mr. Metcalfe, for examination?—A. Yes, sir.

Q. Before it went out of your hand and into Mr. Metcalfe's had you verified the transcript with your original notes?—A. No, sir; I had not even opened the package.

Q. Much of the transcript had been made by clerks working under you?—A. Yes, sir.

Q. In what manner and by whom were your short-hand notes transcribed into long-hand?—A. At the close of every session—every day's session—I would have my clerks waiting for me in my office, and would give the first one a half hour's dictation from my short-hand notes. At the close of his half hour I would make a check of my notes, giving the name of the clerk next following. Then the next clerk would take his half hour of that same day's proceedings, and so on until the full number of clerks were at work. There were, I think, some evenings six or eight. We worked frequently till midnight, until completing the testimony of that day—until it was all dictated. They took it in short-hand from my dictation from my notes. Then they took it to their residences, transcribed it at their leisure, and brought it back to my office. There it passed into the charge of one of my brothers, who was instructed what to do with these different parts. He would take the first half hour, the second half hour, the third half hour, and so on till the close of all the witnesses of that day, place them together, number the pages, and tie the parcels up separately, of that day's proceedings, and mark it on the outside. And so it went on through the entire case.

Q. State whether the original short-hand notes taken by you were ever out of your possession.—A. No, sir. Any short-hand man knows what that means.

Q. (Interrupting.) When they came back to you from Mr. Metcalfe, state whether or not any changes, or suggestions, were marked on any of them.—A. There were pencil memorandums on some of them.

Q. State whether or not you adopted any of the suggestions contained in those pencil memorandums.—A. I adopted them in this way: There were blanks in those crude transcripts as they were brought back by my clerks, brought about by their inability to read their notes. Sometimes there were whole paragraphs left out. Mr. Metcalfe would mark in his suggestions, this name here, this there; and, of course, when I came to the corrections—when I got these sheets back and made my correction, in reading my notes—where my notes tallied with Mr. Metcalfe's suggestions my notes prevailed—no, I don't mean that they were exactly alike, and I inserted them, but not otherwise.

Q. State whether or not the testimony had been attested by you at the time it passed into the hands of Mr. Metcalfe.—A. It was not. It was neither signed nor sealed. It had never been in my possession to look it over for one half minute. It passed out of the hands of my clerks into the hands of my brother. After all this was done, and it was received back, I made my corrections. It then went into the box, signed and sealed—went on to the House of Representatives. It was never seen by anybody.

Q. State whether or not the testimony, as finally forwarded to the House by you, corresponded with the original stenographic notes of the testimony as taken from the witnesses.—A. It did.

Q. When did you attest the transcripts?—A. I attested them about the last day before I sent them. I spent one whole day at that testimony. I allowed that to be the very last thing.

We think this testimony absolutely disposes of this charge.

RECAPITULATION.

| | | |
|---|-------|-------------|
| Vote returned for contestant..... | 9,290 | |
| Vote returned for contestee..... | | 9,487 |
| Add to contestant those improperly stricken off..... | 155 | |
| Add to contestant those on poll-book who were refused by judges..... | 35 | |
| Add to contestant those registered at polls, but votes refused by judges..... | 8 | |
| Add to contestant those who offered to register and were refused..... | 86 | |
| Add to contestant "Chronicle tickets" thrown out..... | 23 | |
| Add to contestant votes cast for "Sessinghaus" thrown out..... | 10 | |
| Add to contestant Greenback-Labor tickets thrown out..... | 15 | |
| Add to contestant 8 votes by reason of mistake at precinct No. 148..... | 8 | |
| Deduct from contestee 6 votes by reason of said mistake..... | | 6 |
| Add to contestant Hancock Independent ticket thrown out..... | 1 | |
| Add to contestant pasted ballot thrown out | 1 | |
| | | 9,632 9,481 |
| Add to contestant votes offered and refused at precinct No. 39..... | 20 | |
| Deduct from contestee minor's vote..... | | 1 |
| | | 9,652 9,480 |

Majority for contestant, 172.

We therefore recommend the adoption of the following resolutions:

I. *Resolved*, That R. Graham Frost was not elected as a Representative to the Forty-seventh Congress of the United States from the third Congressional district of Missouri, and is not entitled to occupy a seat in this House as such.

II. *Resolved*, That Gustavus Sessinghaus was duly elected as a Representative from the third Congressional district of Missouri to the Forty-seventh Congress of the United States, and is entitled to his seat as such.

VIEWS OF MR. A. A. RANNEY,

AS EXPRESSED IN COMMITTEE.



At the request of the member of the committee reporting this case, Mr. Ranney furnished him with a copy of his views submitted to the full committee, and which governed him in voting in the committee to award the seat to Mr. Sessinghaus. They state the law applicable to this case so succinctly that we append them:

I have examined, with as much care as able, both the report of the subcommittee and the arguments made by the respective counsel upon the special legal question ordered by the committee to be reargued.

swing that the subcommittee has examined the questions of fact great thoroughness and care, I am disposed to adopt their conclusion upon them. I have, however, examined the evidence and heard arguments upon the material issues of fact so far as to satisfy myself of the justice of those conclusions. It appears to me that aside from contentions of law urged as to the validity of the city ordinances relating to registration of electors, and on the assumption that they are authorized and valid under the Constitution of the United States and the Constitution and laws of the State of Missouri, that the conduct of the Board of the city intrusted with the duty of revising the registration list were guilty of bad faith and of gross negligence at least, amounting to fraud, and even of actual fraud, in striking off most if not all of the names in question, who were thereby deprived of the privilege of casting votes for contestant, as they were ready and offered to do so.

It was such as to vitiate their whole action in that regard. And before I believe that the votes of all electors whose names were thus struck off, and who appeared and offered to vote for contestant, should have counted for him.

If the board acted fairly and impartially, and only erred in the exercise of an honest judgment, I should not be willing to go behind the registration list as prepared and left by them. The authority to strike off names already registered is limited any way to those who had died or removed.

In the view taken upon the point stated, it is unnecessary to go into legal questions argued and referred to. I should ordinarily hesitate and deliberate with care, lest I might be mistaken, before I could pronounce against the validity of the city ordinances in question and under which the Board of Registration seem to have acted, and which have apparently been in force and acted upon in the city and State so long. The question is raised and argued on both sides with great ability. I am forced to the conclusion that the acts of the board in striking off names of the parties in question was unauthorized, illegal, and unconstitutional.

That under the Constitution of the United States, article 1, section 4, the State legislature alone had power to prescribe the manner of holding elections, subject to alteration and regulations made by Congress. That this power includes the whole machinery of elections, registration laws, &c., is too well settled to require argument.

I am unable to find any act of the legislature of Missouri which prescribes registration as a qualification or regulation, and which was in existence at the time in question and applicable to the city of Saint Louis. Presently the legislature recognized this as the state of the law, and accordingly, as appears in the argument, passed an act to remedy the evil and provide for it in the year 1881. The charter of the city of Saint Louis must be confined in its provisions to matters municipal, it would be a great stretch of language and principles of law to say that it extended beyond that and embraced authority to regulate the manner of holding elections in matters of State and Federal offices so the city authorities could establish registration laws and prescribe the qualifications of voters and limit the right of exercising the franchise. It is more than doubtful whether the legislature, which is alone invested with authority of this kind, could thus delegate it in any way. I do not propose to go into a more minute and elaborate discussion of the point. My conclusion is that contestant was elected.

Mr. MILLER, from the Committee on Elections, submits the following:

SUPPLEMENTARY REPORT

IN THE ELECTION CASE OF SESSINGHAUS vs. FROST :

In reporting the views of Mr. Ranney, as expressed in committee, there were certain errors in the statement of them. They, as appended to the report made, are hereby corrected so as to read as follows, viz:

VIEWS OF MR. A. A. RANNEY, AS EXPRESSED IN COMMITTEE.

[At the request of the member of the committee reporting this case, Mr. Ranney furnished him with a copy of his views submitted to the full committee, and which governed him in voting in the committee to award the seat to Mr. Sessinghaus. They state the law applicable to this case so succinctly that we append them:]

I have examined, with as much care as able, both the report of the subcommittee and the arguments made by the respective counsel upon the special legal question ordered by the committee to be reargued.

Knowing that the subcommittee has examined the questions of fact with great thoroughness and care, I am disposed to adopt their conclusions upon them. I have, however, examined the evidence and heard the arguments upon the material issues of fact so far as to satisfy myself of the justice of those conclusions. It appears to me, aside from the questions of law involved, that the official board intrusted with the duty of revising the registration lists were guilty of fraud, or a violation of duty equivalent to fraud in its operation, in the action taken, and that their deputies and agents, for whose conduct they were responsible, practiced actual fraud, and that this vitiates what was done in the premises in striking off the names of persons previously registered and who were still alive and had not removed.

Had the board acted fairly and impartially, and only erred in the exercise of an honest judgment and under competent authority, I should not be willing to go behind the registration list as revised and left by them.

In the view taken upon the point of law stated, it is unnecessary to go into the legal questions argued and referred to. I should ordinarily hesitate long and deliberate with care, lest I might be mistaken, before I could decide against the validity of the city ordinances in question and under which the board of registration seem to have acted, and which have been apparently in force and acted upon in the city and State so long. But the question is raised and has been argued on both sides with great ability. And I am forced to the conclusion that the action of the board in striking off the names of the parties in question was unauthorized, illegal, and void; that under the Constitution of the United States, article 1, section 4, the State legislature alone had power to prescribe the manner of holding elections, subject to alteration and regulations made by Congress. That this power includes the whole machinery of elections, registration laws, &c., is too well settled to require argument.

I am unable to find any act of the legislature of Missouri which prescribes registration as a qualification or regulation, and which was in force at the time in question and applicable to the city of Saint Louis.

apparently, the legislature recognized this as the state of the law, and accordingly, as appears in the argument, passed an act to remedy the defect and provide for it in the year 1881. The charter of the city of Saint Louis must be confined in its provisions to matters municipal, and it cannot be held to extend beyond that. It is more than doubtful whether the legislature, which is alone invested with authority of this kind, could thus delegate it any way.

It would seem, in any event, that the authority to strike off names already registered was limited to those persons who had either died or removed. But the board went beyond this, and did not proceed according to law and by fair and legal means to ascertain and determine what was intrusted to them.

Mr. MOULTON, from the Committee on Elections, submitted the following as the

VIEWS OF THE MINORITY:

I.

The first question presented by the record in this cause is a motion to suppress the depositions taken for contestant.

The motion and the affidavits will be found on pages 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 of the Record, and are printed and attached to this report as an addenda.

This motion was before the full committee in the month of January, 82, and as the testimony was not then in print the motion was passed ~~on~~ "without prejudice," leaving the question to be investigated and decided after the depositions and all papers pertaining to the motion to suppress should be printed.

The gist of the motion is stated in the fourth ground, which is as follows (page 13):

IV. That all of said depositions since the taking thereof have been withdrawn from the care of the notary by one of the counsel for contestant, and were in his ~~ice~~ part for many days and part for many weeks, and were by him mutilated, ~~anged~~, and altered.

It is quite clear that the law is scrupulously particular in demanding that the spotless integrity of depositions shall be preserved. It is insitive to the highest degree in considering a complaint such as we find here. Even in mere *matters of form* it demands the most exact compliance with such formalities as the various statutes may require.

We cite a few cases in which motions to suppress depositions were sustained where mere formal rules were disobeyed:

2. Washington Circuit Court Report, p. 356: "A commission which had been executed and returned was set aside because it had been opened by one of the officers of the government before it came into the hands of the clerk." (United States *vs.* Rice's Administrator.)

Shankwiker *vs.* A. Reading (4 McLean's Reports, p. 240): "The law requires the position taken under act of Congress to be retained by the officer until he deliver the same into court, or shall, together with a certificate of the reasons for taking it," &c. Read *vs.* Thompson (8 Cranch, 70—J. Story): "Independently of all other grounds, the court are of the opinion that the fact of the depositions not having been opened in court is a fatal objection."

1 Brown's Admiralty Reports, p. 66: "Though a deposition be taken under a stipulation, waiving all objections as to the form and manner of taking, it must still be returned to court in all respects as required by law."

The charge of the motion, however, goes not only to form, but to substance, and claims that the worst of bad faith was exhibited by the attorney of the party in whose interest the depositions were taken. The court in *Beverly vs. Burke* (14 Georgia, 70), says:

In deciding as we do we establish no new rule. We hold that the case presented to us falls within a rule already well settled, and that rule simply is that there may be no circumstances of unfair advantage obtained by one party over the other in having testimony taken by depositions. * * * Many written cases may be found in which it has been held that such depositions should always be taken in good faith. I content myself with referring to but one. In *Beau rs. Quinby*, 5 New Hampshire, 98, the court says, "The invariable rule by which this court is governed in the admission of depositions is not to receive any which have not been taken fairly and with the utmost good faith."

It appears from the affidavits in the Record (pages 13 and 15) that counsel for contestee having heard that one of the attorneys for contestant had obtained and manipulated the depositions resolved to ask him if the information was true that he had obtained the depositions from the notary.

The answer of the attorney was, "Oh, no; I did not have the testimony; I had only my depositions of one day, and that was the day the city ordinances were introduced; I wanted to see if they were reported correctly."

The question that was asked was by one who had the right to ask it, and it demanded a full and fair answer. The good faith required in the taking of depositions demanded even more than this.

Papers of such importance should never leave the custody of the officer without the full knowledge and consent of both parties.

Here not only was there no such consent given by counsel for contestee, but he had not even the slightest intimation that the notary had parted with the depositions. Both the notary and the attorney to whom he gave the depositions carefully concealed from him all information as to the truth of the facts, although in response to the direct inquiry of counsel for contestee, pages 13 and 14, the attorney made answer, "Oh, no; I did not have the testimony; I had only my depositions of one day, &c., yet on pages 15 and 16 we find these letters.

EXHIBIT A.

ST. LOUIS, Aug. 4, 1881.

FRANK KRAFT, Esq., or HIS BROTHER:

I have just returned from the North, and want more manuscript to work up. I return by messenger the testimony taken Feb. 1st, 2d, and 3d.

Please send me by bearer (or, if you are not at home, by messenger, as soon as possible) the testimony for six or eight days following the 3d of Feb. I don't know what dates they may be, for a Sunday probably intervenes. I guess you had better send me 8 days' testimony, for I want to work pretty steady on it now.

Yours, truly,

L. S. METCALFE, Jr.

EXHIBIT B.

ST. LOUIS, Aug. 8, 1881.

MR. CRAFT:

DEAR SIR: I return you testimony taken Feb. 4th and 5th. I want to retain that for Feb. 7th for a few days, as I have a copyist at work copying names from it. Will return it when I return next batch. Please send me testimony for at least six days, and, if you can, eight days. I finish it up so fast that it will keep me sending all the time, and oblige—

Yours, truly,

L. S. METCALFE, Jr.

EXHIBIT C.

ST. LOUIS, Aug. 18, 1881.

r: I send you by messenger the testimony taken Feb. 7, 8, 9, 10, 11, and 12. I have received, except that for Feb. 14. The latter I am on, and will return next batch. Please send by bearer, or as soon thereafter as possible for the following eight or nine days; that is, Feb. 15, 16, 17, 18, 19, 20; and oblige—

, truly,

METCALFE.

Is Frank return?

ts here stated are so thoroughly established that no attempt has been made to dispute them.

pear to us, in considering a question such as is before us, to the importance to this controversy.

affidavits supporting this motion go farther. It appears that they not only had possession of all of the depositions, but he them.

In an affidavit, in speaking of the writing proved to have been him, he says he "merely made marginal suggestions" (page

mere marginal suggestions" were in the matter of names and which in this, as in most Congressional contests, constitute a vital issue.

"marginal suggestion" was left unheeded that fact might have he alarm which such manipulation of the depositions created, rection given by the attorney in his "marginal suggestions" iably and blindly followed by the notary, as appears from his affidavit (page 25).

Metcalfe, Jr., importuned me to let him have the testimony itself, as transcribed. I did give him possession of it for review and correction of the spelling of names. I trusted to his integrity to write correctly the names of personalities as given by the witnesses. I could rely on my notes of testimony to this, and hence I took Metcalfe's written suggestions, believing that I was giving names and localities as they were given by the witness at the stand.

Notary swears that he could rely on his notes of testimony in all but those in which the attorney was permitted to direct

at submitting these changes to the attorney for contestee, or that any are to be made or any have been suggested, he has in every instance the testimony as written to conform to the marginal suggestion."

ars to us that the notary in the counter-affidavits cannot swear that the testimony transmitted is the testimony as given, when he also states that he could not rely on his notes of testimony in the very vital instances where changes at the attorney's *ex parte* request.

Committee in January appointed a committee, consisting of Missouri, and Ritchie, of Ohio, to examine the depositions to see if it was a fact that contestant's attorney had written upon them made changes, as charged.

ook a portion of the very voluminous depositions, and found it to be true that he had written upon them.

his, in a hurried examination, found over one hundred instances of Metcalfe's marginal writings, and in each and every instance of the testimony was altered to conform to the marginal di-

While it would thus appear that the attorney had not with his own hand changed and altered the testimony as written, yet inasmuch as the notary did it at his dictation, confessing he relied on "marginal suggestions" more than his notes of the testimony, we cannot appreciate any substantial distinction to be drawn that will excuse the alteration.

The attorney at his pleasure made the changes in the body of the testimony, using the hand of the notary, who confesses he relied more upon what the attorney had written than what he himself had written. He could not rely on his notes.

The law does not permit depositions to be drawn by any attorney interested in a cause. The reason of the rule is well stated in these cases following a special statute:

Hurst & Co. vs. Larpim (21 Iowa, p. 484, Lowe, C. J.), appeal from the order of the court suppressing certain depositions for the reason that they had been written by the counsel for the party in whose favor they were to be read as testimony, instead of its being done by the commissioner designated in the notice. The objection was well made and properly sustained, and that, too, without the slightest imputation on the counsel who officiated as scribe. It was simply a legal impropriety which it was competent for the court to correct and enforce by rule, if need be. The notary is supposed to stand at all times indifferent to the parties, whilst the lawyer, having made himself a partisan, is sufficient to feel a bias in favor of his client. Should he act as scrivener in taking and in after reading it over himself to the witness for correction or approval, contrary, as we think, to the spirit of the statute, however honestly done, it would nevertheless subject him to criticism and suspicion. To relieve him of this left-handed compliment we hold the court did not err in suppressing depositions.

Again, in *Allen vs. Rand* (5 Conn., 522):

The law will not trust an agent to draw up a deposition for his principal, as by the insertion of a word the meaning of which is not correctly understood, or by the omission of a fact that ought to be inscribed, the testimony thus garbled and discolored will be false and deceptive. Nor is there a possible argument in favor of such a proceeding.

The statute even when strictly construed is sufficiently lax, when *ex parte* depositions are taken at least, not unfrequently to admit of the poisoning of justice in the very foundations, for if the evidence is untrue or partial the result can never be conformable to right. * * * As the witness ought to be disinterested, so must the evidence be impartial, comprising the whole truth, as well as nothing but the truth, and that never can be rationally expected when a deposition is drawn up by an attorney or agent. * * *

It is much preferable that in particular instances the party should even be deprived of testimony than a principle leading to widespread mischief should be adopted. It is true that an agent may draw up a deposition impartially, and there is no reason to doubt that the young lady in the case acted with the most delicate integrity. But the statute was made in contravention of wrong and intends not in any case to place confidence where it may be abused.

Such are reasons given for the rule in cases where, in the language of the court, "there is no reason to doubt that the young lady in the case acted with the most delicate integrity."

But this case is broader, and shows that the same disposition and the same delicacy which the court attributes to the party in that case, in which the depositions were suppressed, cannot, under the affidavit of the notary in this case, be given to the attorney who wrote the "marginal suggestions."

On page 18 the notary, speaking of alterations in the testimony of a witness who was testifying to character, says:

When that witness was yet in the room, after giving his testimony, counsel for contestant requested of me, as did also the witness, to leave out such profanity, but counsel for the contestee positively refused to allow this. I then stated to the witness that I would not write the objectionable words in full, but would simply indicate them, and in this manner they appeared in my manuscript. I was therefore surprised to find this language erased.

As the witness using the profanity was at the time testifying to the good character of another witness for contestant, contestee insisted that his language as given on the stand should remain. It affected the weight of his testimony as a witness to character.

Notwithstanding there was a controversy as to eliminating it, and contestee insisted it should remain and the notary decided it should remain, the notary finds it tampered with, and swears, page 18, "I was therefore surprised to find this language erased."

The disposition of any interested party cannot be safely trusted in the matter of writing or dictating changes in a deposition, even where there is no such proof as there is in this cause, establishing the fact that changes were made in particular testimony after a positive decision by the officer that it should remain. The fact that it had been a matter of controversy fixed the matter on the mind, and to boldly alter or erase under such circumstances is a positive index to the interest and disposition of the attorney who was thus surreptitiously intrusted with the deposition on which he must make his case.

We canot under the law and the fact escape from the conclusion that this motion ought to be sustained. Why this question is ignored in the majority report of the subcommittee, when the full committee reserved it and ordered all matters pertaining to it to be printed, is a surprise to us.

It is all the more a surprise when, after the full committee had passed on the motion to suppress, "without prejudice," the subcommittee, in order to endeavor to restore to the depositions the integrity they had lost, obtained an order of the House calling the notary to Washington, and commanding him to bring with him his notes of testimony for comparison with the alleged altered deposition. The order further provided that a stenographer might be employed and a full investigation had.

This investigation was bad, but, to add to the surprise, the notary stated he could not make the comparison demanded. He had destroyed the original notes of testimony. It further appeared that he had destroyed these "original notes required" after he knew both from personal information and from the newspapers of Saint Louis, that the integrity of his depositions was attacked. This destruction was also in the face of the fact that stenographers preserve their notes even where they are not necessary to the settlement of such a grave charge.

Inasmuch as it was the duty of the party who destroyed the integrity of the depositions to restore it, and in view of the relation that existed between that attorney and the notary, the destruction of such important papers while a charge of this nature was pending is, to say the least, adding another bad feature to a bad case, that prevents us from escaping the issue presented by the motion, and hence we must report that the motion to suppress ought to be sustained.

II.

The first clause of the majority report is that 155 votes should be given to contestant, for various reasons, involving questions of law and fact.

We are not able, from a careful reading of the report, to gather with certainty any particular proposition either of law or fact on which the majority rely in claiming these votes should be counted.

The proposition, as gathered at the bottom of page 6 of the report, is that the board of revision of the city of Saint Louis, appointed under the registration law, "improperly, wrongfully, and fraudulently denied them the right to vote."

If the fact were true that the board of revision acted fraudulently or were in any manner disposed to improperly or wrongfully remove from the list any voter who they knew was entitled to remain, we would concede it to be our right and our duty to rebuke such fraud.

But the fact as stated is not true. It is glaringly false. That particular board of revision, instead of being disposed to do wrong or act fraudulently in the performance of their duty, were, as this record ample shows, a board composed of the best citizens of Saint Louis, and scrupulously impartial in the discharge of their duties. (Pages 1811, 1862, 1806, 1791, 1799, 1823, 1834, 1838, 1839, 1852, 1876, 1893, 1974, 2414) They are spoken of thus:

Leverett Bell, city counselor, testifies, on page 1811 of the Record:

Q. Were you acquainted, Mr. Bell, with any of the members of the board of revision?—A. Which board of revision?

Q. The one that immediately preceded the election of November 2 last?—A. Oh yes, sir; I knew nearly all of them, I think.

Q. What, in your judgment, was the standing of those men in the community, and their reputation for integrity and fair dealing?—A. It was a most excellent board in every respect. I think that within my experience of six or seven years in the city hall, and of the boards of revision, I never knew any better board, taking it all the way through, than that; it was a board that didn't represent any political party exclusively, but it represented all classes; it was intelligent and honest; and I thought it was a model board at the time it was selected.

Charles G. Gonter, on page 2414, testifies:

Q. What was your opinion of the standing as citizens of the board of revision which sat at the April and November elections?—A. I thought they were high-toned gentlemen, and incapable of doing anything wrong.

Q. In their actions was there anything of a partisan character?—A. Nothing whatever.

It appears that perfect good faith characterized all of the actions of the board, and although composed of gentlemen of different political belief the utmost harmony prevailed. It even appears from the Record that the president of the board was a Republican (testimony of Henry S. Parker, page 1862 of the Record):

Q. What is your name?—A. Henry S. Parker.

Q. You live in this city, do you not, Mr. Parker?—A. Yes, sir.

Q. Mr. Parker, how long have you resided in the city of Saint Louis?—A. Forty-three or forty-four years.

Q. What is your business?—A. I used to be in the lumber business, but I am not in any business at present.

Q. Were you a member of the board of revision that sat just prior to the last November election?—A. Yes, sir.

Q. Were you an officer of that board?—A. I was presiding officer, I believe.

Q. You were its president?—A. Yes, sir.

Q. What are your politics?—A. I am a Republican.

If it is insisted that these 155 names should be counted for contestant, basing the claim on any fraud or attempted fraud of the members of the board, we must find that the record overwhelmingly proves such a claim false in fact.

III.

The question of fraud on the part of the members being disproved and disposed of, other grounds must be sought to set aside the action of the board of revision as to these 155 persons. On page 7 we find the proposition to be that these votes should be counted, because the proceedings of the board were in violation of the law which gave them authority.

report says, page 7:

resolution adopted at the beginning, heretofore cited, they declared they hear no testimony, and not act upon the knowledge of the board.

must deny that any such resolution was passed. The resolution page 4 of report, and speaks for itself, and it will bear no such rection.

resolution is a perfectly proper one, one made to facilitate the nse labors of the board. All bodies of this character must act gh committees. The resolution simply constituted each member e board a committee to gather "knowledge of errors," and report ame to the board, who then passed on his report, and made the wledge of the member" the "knowledge of the board."

city counselor of the city of Saint Louis, being interrogated by el for contestant as to the law governing the board of revision, states it (page 1816) :

hen you construe the words "their knowledge" to mean the knowledge of any dual member, and the words "competent testimony" to mean any kind of evi which in the mind of any individual would be a fair presumption that certain id exist ?—A. I understand "competent testimony" there applies to cases where es are produced before the board, and the words "their knowledge" apply to tside operations of the members of the board. Isn't that a fact ? The words etent testimony" apply, as I remember the law, to witnesses produced before ard, who testify before the board. And "their knowledge," as spoken of, is edge acquired by the member of the board outside the board itself. Now, as t, I say that any member of the board gaining information, in a manner that satisfaction to his mind as being honest and impartial, may at any time report nformation to the board; and if satisfied that the report is true, the board may the report and proceed to strike off the names, although the members voting for port have no knowledge of it themselves. I say this construction necessarily s to that law. Any other construction would so impede the operations of the of revision that it would be a *board of revision only in name*.

IV.

next find the proposition to be that the members of this board in ring information and knowledge employed assistants, and because obtained their information in many cases through assistants the n of the board of revision on these 155 names should be set aside. ort, page 5.)

complete answer to this, as well as much satisfactory information the work of revision in the city of Saint Louis, will be found again e testimony of Leverett Bell, esq., the city counselor of the city int Louis (page 1815) :

s there any law, Mr. Bell, authorizing this board, or the individual members of it, ploy assistants ?—A. Well, I don't think, Mr. Pollard, that the employment of nts is inconsistent with anything in that law. The board of revision meets and sion for a limited time; the list of voters in this city embraces about 60,000 ; those names, if you divide them into wards, would be divided into twenty- parts, and each member would have one twenty-eighth, or less or more, of 60,000 to look after during his term of office, to wit, ten days; the action of the board ied to be the action of the majority of the board, and that involves, of course, s by individual members. I don't think that the law excludes the idea that a er of the board may employ such assistants as he desires for the purpose of ob g information; if it were otherwise, if that is excluded by the language of the hen the powers of the board are extremely limited. There is nothing in the ut prohibits, in my judgment, the employment of assistants by members of the of revision to aid in their investigation of the registration list in this city. ist, as I have just remarked, contains some 60,000 voters, and it is obviously im le for 28 gentlemen comprising the board of revision to go over that number of and acquire a personal knowledge, from their own personal investigation, as o er each one of those names is a properly registered voter. As the law contains

no conditions denying to them the use of outside parties, I don't regard the employment of assistants by the members of the board as inconsistent with anything contained in the law. The law says, of course, that there shall be a judgment of the board upon the question whether a man is or is not a voter; but the law does not undertake to say how that judgment shall be made up or in what manner that information shall be acquired.

V.

But the action of the board of revision must be set aside because the assistants employed acted fraudulently.

This proposition is all based on the testimony of one Michael Burke. It is magnified by the majority report beyond all limits, and since charges actual fraud on the part of an assistant we have diligently and without success sought for any proof of this fact; of course it is admitted that none of the 155 names sought to be counted were struck off by Burke.

It is painfully apparent that the man was solicited to give damaging testimony in the hope of being rewarded (page 88 of Record):

Q. What induced you, who have in your direct examination testified that you voted for R. Graham Frost (the contestee in this case) for Congress, to spend two months, without promises of pay, in working for Sessinghaus, the contestant, in order to defeat Mr. Frost?—A. Mr. Hardwig.

Q. What did Mr. Hardwig promise you?—A. He promised me nothing.

Q. Why did you do that?—A. He asked me would I go around with him as a friend.

Q. What means of livelihood had you in the mean time?—A. I was borrowing money of Hardwig all along.

And on page 89 following:

Q. And did not Mr. Hardwig expect that you would come here and testify as you have done, and that you would receive some compensation for it?—A. I don't know what he thought, sir.

Q. Did he say so?—A. He did not say so.

Q. Did he say anything of the kind?—A. No, sir.

Q. Was it tacitly understood that you should?—A. That is something I don't know.

The reviser of that ward was a most reputable citizen of Saint Louis, and, as is apparent in his testimony (page 1988), interested only in the faithful and impartial performance of the duty assigned to him.

So scrupulous was he in this discharge of his duty that he did not trust this work to Burke alone, but employed a member of the Republican central committee to accompany Burke. Burke's testimony, page 80 of Record:

Q. Will you please state in what manner you did this work?—A. Wells, myself, and Mr. McClellan did this work.

Q. Who is Mr. McClellan?—A. He is the central Republican committeeman.

Is it not ridiculous to suppose that such a poor fool as Burke could do anything out of the way under the watchful eye of a member of the Republican central committee, who took upon himself the labor of revision for no other reason and with no other end in view than to be sure that the work was properly done?

If there was any question as to the actual fact that Burke did not do any damage, assisted as he was in the performance of his duty by a member of the Republican central committee, it is clearly established by his own cross-examination. He breaks down completely, and confesses he does not know of a single qualified voter against whose name he noted objection. Here are his own words (page 83):

Q. Well, I will ask you again, did you cheat anybody out of his vote that was legitimately entitled to vote?—A. I don't know, sir.

now tell me that you cannot remember the name of one single Republican vote that you struck off those lists?—A. No, sir; not at the present time

; you give the name of any person living at any place when this was I can't think of any one. I don't remember any.

; the sumand substance of the testimony of this man, so magni- ports and briefs as to pass beyond all limits of recognition.

VI.

e action of the board of revision must be set aside because rs whose names were stricken off were not actually notified. majority report.)

w provided for notice by publication, and is as follows:

all sit from day to day, not exceeding ten days, until they have completed , and their proceedings shall be printed daily in the paper doing the city (Revised Statutes of Missouri, 1879, vol. 2, sec. 11, page 1578.)

we have seen, the board of revision was composed of citizens of ute, disposed to act conscientiously in the discharge of their nd they did perform their duty to the best of their ability, and 1 daily, in the official organ of the city, the result of their work, e 155 men were publicly notified before the election of the ac- n on their names, and they took no steps then to correct any made, shall they be permitted to do it now?

permitted this duty—wholly due to themselves as citizens rs at the time of election—to go by default, should they not their indifference or neglect?

the action of that board a finality as far as it went? Has it force of judgment? The law provided how that judgment set aside. It caused the names to be published, so that those off might be notified; and if mistakes were made, the citizens cken off could call the attention of the reviser to the fact that e was made. It is proved that in every instance where the of the revisers were called to mistakes made by them they ected.

VII.

atter of fact a large number of the names printed on page 3 ajority report had otherwise failed to comply with the registr- and their votes could not conscientiously be received by judges m. They had failed to exercise the diligence required of all id to comply with the following regulation:

Any registered voter who shall remove from one place to another in said not less than ten days previous to the election following, report the fact of val to the recorder of votes, giving his name and place or number from well as that to which, he has removed; and said recorder of votes shall ct opposite the name of the person removing, and re-enter his name in the rs for the district wherein he may be entitled to vote. (Revised Statutes i, 1879, vol. 2, page 1578.)

VIII.

ajority of the committee seemed to agree that these views of were correct, and that it could not do for a voter what he neg- do for himself. That if the voter failed to comply with the ns of the law which required him to transfer his name to his

new residence it was his own fault. It was also apparent that the voter had had his day in court, and was notified through the official daily press of the action of the board of revision on his name, and if he failed to take the interest that all citizens ought to manifest in correcting mistakes and complying with regulations, and of preserving the privilege granted by the statute, then the judgment of the board of revision should not be set aside.

The only claim on which the contestant could be seated would be that the registration law of Saint Louis was not in accord with the constitution and laws of the State of Missouri, or that the city of Saint Louis had not the right to adopt a charter containing provisions for the registration of voters.

The Committee on Elections having, as we must presume, satisfied themselves they could make no recommendation to unseat contestee in the registration law of Saint Louis was constitutional, requested argument on that subject.

On January 16, 1883, the committee passed the following resolution:

Resolved, That this case be laid over until January 19, 1883, at which time the parties be allowed one hour on each side for written or oral argument before the whole committee, to be confined to a discussion of the validity and effect of the registration law of Saint Louis.

VALIDITY.

The particular sections affecting this cause embraced in the law the validity of which is now called in question are as follows (Revised Statutes of Missouri, 1879, vol. 11, pages 1576 and 1578):

SEC. 3. Every male citizen of the United States, and every person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years; who has resided in the State one year next preceding the election at which he offers to vote, and during the last sixty days of that time shall have resided in the city of St. Louis, and during the last ten days of that time in the district at which he offers to vote; who has not been convicted of bribery, perjury, or other infamous crimes, nor directly interested in any bet or wager depending upon the result of the election, nor serving in the United States Army, shall be entitled to vote at such elections for all officers, State or municipal, made elective by the people, or at any other election held in pursuance of the laws of this State; but shall not vote elsewhere than in the district where his name is registered, and whereof he is registered as a resident.

* * * * *

SEC. 5. A recorder of votes shall be appointed by the mayor and confirmed by the council, who shall possess the qualifications of a member of the council. He shall hold his office till the first Tuesday of April, 1879, and until his successor is appointed and qualified, and every subsequent appointment shall be for a term of four years. Said recorder of voters shall be ineligible to any elective office during the term for which he is appointed.

SEC. 6. Said recorder of voters shall keep his office at the city hall, and shall at all times, between the hours of nine in the forenoon and five in the afternoon, attend therein for the purpose of recording in the various registration-books furnished him by the register the names of the qualified voters of said city. He is empowered to administer all oaths necessary in the registration of voters; and any person who shall falsely take and subscribe the oath prescribed in the fourth section of this ordinance shall thereby incur the pains and penalties of perjury.

* * * * *

SEC. 11. The mayor shall appoint a board of revision, consisting of one reputable citizen from each ward in the city, who shall possess the qualifications of a member of the house of delegates, whose duty it shall be to meet with the recorder of voters, at his office, thirty days before each general, State, or municipal election, for the purpose of examining the registration, and making and noting corrections therein, as may be rendered necessary by either their knowledge of errors committed or by competent testimony heard before the board; a majority of said board shall be necessary

to do business, and the mayor shall be *ex officio* president thereof. They shall strike from the registration, by a majority vote, names of all persons who have removed from the election district for which they registered, or who have died, and shall note the fact opposite the name of any person charged with having registered in a wrong name, or who for any reason is not entitled to registration under the provisions of this ordinance, which person shall be challenged by the judges of election when presenting himself to vote, and rejected unless he satisfy said judges that he was entitled to register; and said board shall also place on said books the names of such persons as in their judgment have been improperly rejected by the recorder of voters. They shall sit from day to day, not exceeding ten days, until they have completed the labors, and their proceedings shall be printed daily in the paper doing the city printing. They shall each be allowed the sum of three dollars per day for their services.

* * * * *

SEC. 13. Any registered voter who shall remove from one place to another in said city shall, not less than ten days previous to the election following, report the fact of such removal to the recorder of voters, giving his name and place or number from which, as well as that to which, he has removed; and said recorder of voters shall note the fact opposite the name of the person removing, and re-enter his name in the list of voters for the district wherein he may be entitled to vote.

The law from which the above sections are taken is what is designated in the Revised Statutes of Missouri as the "scheme and charter."

The authority to frame this "scheme and charter" is derived not from the legislature, but from the constitution of the State of Missouri, adopted by the people of that State in the year 1875. (See constitution of Missouri, Revised Statutes of Missouri, 1879, section 20, article IX.)

SAINT LOUIS.

SEC. 20. The city of Saint Louis may extend its limits * * * and frame a charter for the city thus enlarged. * * * Such scheme shall become the organic law of the county and city, and such charter the organic law of the city.

Thirteen freeholders were to frame this charter, and the only limitation made by the constitution as to what provisions it should contain is to be found in the following section:

ARTICLE IX, SEC. 23. Such charters and amendments shall always be in harmony with and subject to the constitution and laws of Missouri. * * *

If the registration law above quoted and embraced in the charter thus authorized is in harmony with the constitution and laws of Missouri, wherein can such law be unconstitutional?

If there is any want of harmony it can be readily pointed out. It is certainly not in conflict with any registration law passed by the general assembly of Missouri. Compare the sections of the charter above quoted with sections 4391, 4393, 4399, 4401 of the general registration law passed by the general assembly of Missouri for all cities of over 100,000 inhabitants, and the most perfect harmony is apparent. In fact, they are almost identical in phraseology.

The city of Saint Louis also adopted an ordinance which contains the same provisions embraced in the charter. (See page 1681 and following of the record.)

The ordinance, the charter, and the law passed by the general assembly are substantially copies of each other.

If, then, there is no want of harmony, what other reason can be urged to declare the law invalid?

We find it on page 6 of the majority report of the subcommittee:

True it is the ordinance of Saint Louis provides that a voter "shall not vote elsewhere than in the district where his name is registered and whereof he is registered as a resident;" but it is to be remembered that this ordinance was never passed, accepted, or adopted by the legislature of Missouri, and that the constitution of 1875, which authorized the city of Saint Louis to adopt a charter, also, in another provis-

ion authorized the general assembly to pass a law for the registration of voters in cities having over one hundred thousand inhabitants. The power under the constitution to pass such a law was vested exclusively in the general assembly. An attempt on the part of any other party to make such a law, ordinance, or charter is, to say the least, of very questionable authority.

The section referred to is as follows:

ART. 8, SEC. 5. The general assembly shall provide by law for the registration of all voters in cities and counties having a population of more than 100,000 inhabitants, and may provide for such registration in cities having a population exceeding 25,000 inhabitants and not exceeding 100,000, but not otherwise.

It is apparent that the constitution, in thus providing for "cities and counties," does not include or refer to the city of Saint Louis. Saint Louis is made an exception from all other cities; and in article IX, which refers to "counties, cities, and towns," special sections are adopted for the "city of Saint Louis."

In the case of the City of Saint Louis *vs.* Sternberg (69 Missouri Reports, on page 297) Judge Norton says:

It will be observed that in article 9 of the constitution, under the head of "counties, cities, and towns," Saint Louis is singled out from all other cities and towns in the State, and sections 20, 21, 22, 23, 24, and 25 of the article contain provisions relating exclusively to it.

The fact that the general assembly was ordered to frame a registration law for "cities and counties" of over 100,000 inhabitants was clearly not intended as a restriction of the full power given to Saint Louis to also frame a registration law, provided it was not in conflict with State legislation.

In the same case Judge Norton continues:

The general purpose that the city might have the power to enlarge its limits and separate itself in a governmental point of view from the county, and have the right as a municipality to govern itself, provided its government should be in subordination to and consistent with the constitution and laws of the State of Missouri, is manifested throughout the above sections. * * *

It is clear, we think, from these sections, that it was the intention of the framers of the constitution that the city of Saint Louis might adopt as its organic law a charter containing any and all the provisions then in its charter, and such other provisions as would not be inconsistent with the constitution and laws of the State.

In re Chas. Dunn (vol. 9, Missouri Appeal Reports, page 255) the court says:

An ordinance passed under authority of such a charter must of course be equally in harmony with the constitution and laws of the State; otherwise it will, in so far as it fails of such harmony, be invalid.

By the word harmony in this connection is not to be understood an exact coincidence in all possible points of comparison.

Its meaning is clearly that no regulation established by the charter, nor any made by its authority, shall do violence either to the declared laws or to the policy or manifest governmental purposes of the State, as shown in her constitution and statutory enactments.

As has been observed, instead of there being any want of harmony, any inconsistency, any violence to statutory enactments, the charter, ordinance, and statutory enactments are in perfect accord.

Besides, the registration law embraced in the charter of Saint Louis is by special enactment of the general assembly adopted and recognized as the law governing elections in that city. (Revised Statutes of Missouri, 1879, vol. 11, page 1082.)

Sec. 5503. Elections in Saint Louis—conducted how.—All elections in the city of Saint Louis shall be conducted in all respects as provided by the laws now in force regulating elections in said city.

What does the general assembly mean by "the laws now in force concerning elections in said city," and why does the statute single out Saint Louis, and as to it make such a special provision?

Saint Louis had a registration law of its own; that was in its charter; other cities did not have registration laws of their own, and hence it was necessary to single out Saint Louis.

If there is any further doubt that the registration laws of Saint Louis are meant by the "laws now in force regulating elections in said city," it is but necessary to turn to the Revised Statutes of Missouri, where the charter of the city of Saint Louis is published with the State laws. (Revised Statutes of Missouri, vol. 11, page 1575.)

This publication was incorporated in the revised statutes of the State of Missouri not by chance, but by direction of the general assembly. (Revised Statutes, vol. 1, title "Laws," section 3158.)

There can be no question that when they use the language "laws now in force," in section 5504, and "except as otherwise provided by law," in section 5563, the registration laws of Saint Louis as contained in the charter and printed with the revised laws of the State were referred to as existing laws.

This being the case, instead of there being want of harmony, there is not only perfect harmony, but a legislative adoption of these very laws in question.

We must therefore conclude that these registration laws are valid.

EFFECT.

The question asked made this perceptible, viz:

Even if valid, how far is this committee bound by your registration laws?

The most satisfactory answer to this question will be found in the following quotations from McCrary's American Law of Elections:

The right of suffrage is not a natural right, nor is it an absolute, unqualified personal right. It is a right derived in this country from constitutions and statutes. It is regulated by the States, and their power to fix qualifications of voters is limited only by the provisions of the fifteenth amendment to the Constitution, which forbids any distinction on account of race, color, or previous condition of servitude. (41 Mo., 1 P. Blair vs. Ridgley, page —; Huber vs. Reilly, 53 Penn. State R., 115; Ridley vs. Sherbrook, 3 Cold., 569; Anderson vs. Baker, 23 Md., 531; Brightly Election Cases, see also sec. 3, page 9.)

And again:

Subject to the limitation contained in the fifteenth amendment to the Constitution of the United States, the power to fix the qualifications of voters is vested in the States. Each State fixes for itself these qualifications, and the United States adopts the State law upon the subject as the rule in Federal elections. (Sec. 1, chap. 1, page 7.)

We think that, as to effect, the provisions of the law being reasonable, and the law itself never having been questioned in the courts of Missouri, the House will not see fit to depart from the principle laid down in McCrary, that the rule as to Federal elections shall be in accordance with the laws of the State where the election is held. (McCrary, sec. 1, p. 1.)

If by the word effect in the resolution is meant the practical working of the law, we refer to and adopt the views of the city counselor of the City of Saint Louis, as the same appear on pages 1814, 1815, and 1816 of the record.

It clearly shows that in the manner of performing the duty imposed by the law the board of revision did not proceed otherwise than in accordance with the law.

Although these questions as to validity and effect may be considered as answered in this report by the references herein made, yet we would like to call attention to an obvious erroneous principle urged in the argument in behalf of contestant.

It was urged in his behalf that the law requiring registration was in violation of the constitution of the State of Missouri, because it was adding an additional qualification.

In Capen *vs.* Foster (12 Pick, 485), and Brightley's Election Cases, 51, and McCrary, section 7, page 11, in discussing the power to provide for the orderly exercise of the right of suffrage, and the power to enact registry laws, and to prohibit those not registered from voting, it is decided that such laws do not add to qualifications of voters; they are simply rules regulating voters. And McCrary says, section 7, page 11:

It is now generally admitted that those laws do not add to the constitutional qualifications of voters, and are therefore not invalid.

It was also urged that the law requiring registration was not "imperative" or positive, within the meaning of the rule laid down in McCrary.

The language of the law could not be more positive. It reads thus:

But shall not vote elsewhere than in the district where his name is registered and whereof he is registered as a resident. (Revised Statutes, vol. 11, page 1576.)

And, again, to show that the regulation is imperative, and the qualified voter must see to it that his name is on the registration list, we cite section 5487, Revised Statutes, vol. 11, which contains the oath required to be taken by the judges of election. The section, after giving a form of the oath, adds:

In cities where registration exists they shall also take the additional oath that they will not allow any person to vote whose name is not duly registered.

It is difficult to conceive how expressions more positive could be introduced into the law. As stated before, this registration law under which they have been acting for years has never been questioned in the courts of Missouri, but previous laws have received similar interpretation.

All the decisions of Missouri are in harmony with the rules as stated in this report. (See 41 Missouri, page 63; 43 *id.*, page 290; 38 *id.*, page 425; 44 *id.*, page 346; 54 *id.*, page 502; 67 *id.*, page 331.)

As the only argument invited by the resolution of the committee was as to the validity and effect of the registration laws, we concluded that no report favorable to contestant could be made if investigation showed these laws to be good and valid.

Some labor was devoted to this question, and the references here made leave no possible room for doubt. The laws are reasonable and valid, and it is not to be commended that a contestant should be seated by overturning the laws of a State that are satisfactory to the people of that State, and the legality of which has never been questioned by themselves.

The question here fully discussed should dispose of the whole case, for in the other subdivisions and claims of the majority report these same questions prevail.

In subdivision No. 2, where, as the report says, 35 men were refused for various trivial and insignificant reasons, the trivial and insignificant reasons were a failure and neglect to comply with the law governing the election, the validity of which has been established.

As an instance of this we will cite from the record, taking the name

Samuel Gray, whose vote is sought to be counted by the majority party.

It will be remembered that the law (section 13, page 1576, Revised Statutes of Missouri) required that "any registered voter who shall remove from one place to another in said city shall, not less than ten days previous to the election following, report the fact of such removal to the recorder of voters, giving his name and place or number from which, as well as that to which, he has removed," &c.

Now, from Samuel Gray's own testimony it will appear that he did not comply with this very plain and obviously reasonable regulation. He did not go to the recorder of voters ten days before the election. He did not go at all. Here is his own testimony:

- Q. Well, when you removed from 2718 North Tenth you did not go to the city hall to transfer to 805 Palm?—A. No, sir.
 Q. Why did you not go there to obtain your transfer?—A. For the simple reason it I thought I could get it there at the polls.
 Q. Did you not know it was the universal rule at all elections, this last as well as previous elections, that judges at the polls could not transfer you on election day?—A. I did not, sir; I supposed it would be just the same it was before.
 Q. Was there ever a transfer made at the polls in this city by any intelligent judge election?—A. I could not say, sir.
 Q. At this poll that you visited the judges were equally divided, Democratic and Republican?—A. I could not say, sir.
 Q. Well, there were Republican judges there?—A. I suppose there was; I don't know but they were; I don't know anything at all about it.
 Q. The gentlemen in whose company you visited the poll were perfectly informed in regard to that fact?—A. I suppose they were; I don't know.
 Q. Well, they talked to the judges about your case?—A. Yes, sir; Mr. Shoenbeck did, anyhow.
 Q. And it was carefully considered?—A. Yes, sir.
 Q. How long were you at the polling window?—A. I was there some twenty minutes, I guess.
 Q. Talking about your vote as to whether you could vote or not?—A. I went there twice.
 Q. How long did you remain the second time?—A. About five minutes; they just told me that I couldn't vote, and I went back to my work.
 Q. You could not vote—what was the reason?—A. Well, because I was not transferred, sir.
 Q. The judges treated you politely?—A. Yes, sir; they all treated me well enough.
 Q. And it was their conclusion that you, having neglected to transfer, it was within their power to transfer you on election day?—A. I suppose that was their idea of it, sir.
 Q. And you went away?—A. Yes, sir.
 Q. And that was all that was said and done there?—A. It was all that was said and done at the polls, that I know of.

Of course the judges of election could not receive such a voter without violating their oath of office.

The reasonableness of the rule of law requiring the voter to notify the recorder of votes of his removal, and thus obtain a transfer of his name on the registration list is apparent.

The reviser of the ward, when he visits the place from which the voter has removed, does not find him living there, and it is made his duty by the law to strike his name off as a voter from the residence in which the voter has removed.

The reviser cannot seek out with accuracy the exact streets and numbers to which the citizen has removed, hence the law very wisely makes the duty of the citizen himself to attend to this matter ten days before the election.

The ten days' previous notice is required of the citizen because the registration list for each voting district in the city of Saint Louis has to be printed before the day of election.

Inasmuch as there are 244 election precincts in the city of Saint

Louis (Record, page 1701), and each of these must be furnished by recorder of voters with the name and street and number of the voters living in each, it is apparent that confusion would arise unless it was made the duty of the voter himself to give the information as to the street and number to which he had removed.

If this is neglected by him, it is the voter's own fault. The right to vote is a privilege, and diligence on the part of the voter is demanded, and if we find neglect instead of diligence, we cannot do for him at Washington what he should have done for himself at Saint Louis.

Even in the case of the 155 votes sought to be counted by the majority report the same neglect on the part of the voter appears even in their own testimony. We will cite just a few.

Daniel Dickey, in majority report (Record, page 563), swears in regard to his own case as follows :

Q. The only registration that you ever made at the city hall was from 3304 Laclede avenue, which is not, however, your present residence ?—A. No, sir; it is not my present residence. It is more than a mile from where I now live. It is near two miles.

Q. And you never obtained a transfer at the city hall ?—A. No, sir.

Q. You have spoken here about voting. I will ask you whether you ever obtained a transfer at the city hall; whether you ever obtained a transfer from your former residence to your present residence ?—A. No, sir.

Q. Why did you neglect that, Mr. Dickey ?—A. Simply because I had never thought of it, only immediately before the Presidential election, and the crowd then was so very great I had no time or inclination to stay there a whole week to get registered; that is to get a transfer.

Edward T. Goodfellow (Record, page 566) :

Q. You never obtained a transfer from your last registering place and didn't register at the polls ?—A. No, sir.

Q. And the place that you registered from on April last was a mile or two from where you lived on election day ?—A. Yes, sir.

John Johnson (Record, page 1166) :

Q. When you moved did you notify the officers at the city hall that you had moved ?—A. No, sir.

Q. So you got no transfer between these places—you got no transfer from one place to another ?—A. No, sir.

Q. How far are they apart—where you registered from before and where you lived on election day—how far are these two places apart ?—A. Well, it is at least two miles, I guess.

George Lang (Record, page 1587) :

Q. Why didn't you obtain a transfer when you moved.—A. I suppose it was my neglect.

Q. You knew it was your duty to do it ?—A. I suppose so, but then I am pretty busy all the time.

Charles Meslemacher (Record, page 1059) :

Q. You are a commission merchant, you say ?—A. Yes, sir.

Q. They told you at the polls that you had moved, and therefore your name was not on the list ?—A. They said my name was stricken off and they could not find it on the new list; they didn't have my name.

Q. You moved from 1304 Warren ?—A. Yes, sir.

Q. Where you had previously registered ?—A. Yes, sir; to 2517 North Thirteenth.

Q. And you didn't notify the authorities at the city hall of the fact that you had made that removal ?—A. I did not notify them.

Q. And therefore you had obtained no transfer ?—A. No, sir; I had not obtained any transfer.

Robert E. Nagle (Record, page 720) :

Q. You didn't have time to obtain a transfer ?—A. No, sir.

Q. And the registrar at the polls told you that inasmuch as you had not obtained a transfer he couldn't register you at the polls, because no transfers could be made at the polls ?—A. That is the understanding I had.

Q. That was the same all over the city?—A. That is the idea; yes, sir.

Charles A. Price (Record, page 643):

Q. You found your name stricken off at the first place that you went to?—A. Yes, sir.

Q. And you told the judges that you had registered before that, but had failed to obtain a transfer?—A. Yes, sir.

William Raining (Record, page 1040):

Q. Where were you living when you voted for Hayes?—A. Well, I was living on Victoria street then.

Q. And after you moved from Victoria street you did not notify the authorities at the city hall of the fact of your removal in order to obtain a transfer?—A. No, sir.

Q. Why didn't you do that?—A. Well, I didn't think about it. I asked Mr. Condes about it, and he says it was not necessary; it will be time enough to do that at the polls.

Q. Did you not know that it would be impossible for any judge to make a transfer?—A. I didn't know that, sir.

Q. If you had known that you would have gone to the city hall?—A. Yes, sir.

Q. And got your transfer in proper form?—A. Yes, sir.

Q. You know that there was a great many Democrats as well as Republicans that were in the same situation that didn't know the fact, and therefore could not vote at the election?—A. Yes, sir; I suppose so.

Frank Schallon (Record, page 777):

Q. Why didn't you go to the city hall and have this transfer made?—A. Well, I thought it was near where I lived. I lived in the same place where I lived before; I thought I had a right to vote; nobody was telling me anything else. I told George Davenport to have me registered, and he promised to do so. That is where he lived. He said that he would see to my name.

Q. Why didn't you go to the city hall and attend to that yourself, inasmuch as you were the party?—A. I haven't got the time to run around and have myself registered.

Aug. Solari (Record, page 581):

Q. So you didn't take time and wait to obtain a transfer?—A. I did not. I thought I was entitled to register at the polling place.

Q. So when you went to the polls the judges told you that under the law they had no power to make a transfer on election day; that it was your duty to do that at the city hall prior to the election after you had removed?—A. That is about it, sir.

John Zieres (Record, page 993):

Q. And they told you, that you not having transferred there, that you could not vote at those polls?—A. I went back to the polls and told one of the judges there, Mr. Schaeffer—Louis Schaeffer; he was a judge and one of my friends—

Q. He was a Republican?—A. I don't know what ticket he votes.

Q. But you suppose him to be a Republican?—A. I have heard him to be such.

Q. He was a Republican judge at that poll? You are an intelligent white man.—A. I think I am.

John G. Redemeirer (Record, page 803):

Q. You say you always voted on Broadway?—A. Yes, sir.

Q. How far is that from the place that you lived in on election day?—A. Well, I suppose that is within a half a mile.

Q. Well, that is in a different polling precinct?—A. Yes, sir.

Q. But you obtained no transfer?—A. No, sir.

Q. Never did get one?—A. No, sir.

Q. Why didn't you go to the city hall to obtain a transfer?—A. I wouldn't be bothered that much.

Q. You didn't take enough interest in it to go up there and get it?—A. No, sir.

Q. You didn't care enough about it?—A. I didn't trouble my head about it; I didn't care a damn.

Q. You didn't care a damn?—A. No, sir.

Q. You didn't take enough interest in the matter to go to the city hall and transfer?—A. No, sir.

Here are voters and only a few of many whose names are in the majority report who did not take interest enough in the election to comply

with the regulation of the law to notify the officials of their removal from one residence to another.

These names in last citations are all included in the first claim of 15 votes grounded on their being *improperly stricken* from the registration list. Their own testimony shows it was the duty of the revising board to strike them off from "appearing on the lists as residing at a certain place" from which place they themselves admit they had moved. They were not improperly stricken off. The reviser acted properly. The voter neglected to do his duty.

In all the claims of the majority report this neglect of obedience to a reasonable regulation underlies the claim as presented.

There are two claims of mistake in the official count of a few votes, six or eight, but the testimony on which the official return is sought to be contradicted does not rise to the dignity of being seriously considered as evidence. There is a claim that 15 Greenback Labor tickets were rejected on which it is supposed the name of contestant appeared, but on a reference to the record the one witness who testifies to this does not give any positive testimony; it is all guess-work. The witness himself does not appear to be familiar with either the make-up of the ticket or the number who voted them; thinks most of the 15 had contestant's name on. (See his testimony, page 612, as cited in report.)

Regarding as we do that the settlement of the question of the validity and effect of the registration laws of Saint Louis decides this case in favor of the sitting member, we do not deem it necessary to go into detail of votes. However, there is a claim of 86 votes made under a special registration law, called the "O'Neil act," which enabled persons never registered to register at the polls; and such a gross abuse was made of this privilege in this cause in the interest of contestant that some reference should be made to this claim in this report.

This act was enforced that election, but on account of these gross abuses had to be repealed. These abuses will be referred to hereafter.

We must say now, without quoting fully from the citations of the majority report, that they show that, as usual, the voters whose names are given had failed to transfer. They actually had been previously registered, and hence, having been once registered, could not avail themselves of the extraordinary privileges of that act. The act is as follows:

AN ACT to provide for the exercise of the right of voting by persons who have failed to register.

Be it enacted by the general assembly of the State of Missouri as follows:

SECTION 1. In all State, county, and municipal elections hereafter held in any city of this State having a population of one hundred thousand inhabitants or more no person shall be deprived of the right of voting at such election by reason of having failed to register: *Provided*, That in all cities where registration is required by law the party offering to vote, but who from any cause *has failed to register* before he offers to vote, shall be, on the day of such election, registered by a special registrar of election, appointed by the judges of election for that purpose at each precinct, as a qualified voter, in a book to be kept for that purpose; and the ballot of such voter shall be received and counted at such election; and such registrar shall return to the registrar of voters of such city the list of such voters so registered within ten days after such election, provided the said registrars shall be sworn as provided for the recorder of voters, and the books shall contain the written or printed oath as required in the regular registration books.

Approved March 30, 1877.

Here is a sample of the men who never had registered. John Bellville (Record, page 476):

Q. How often did you change your residence in the city of Saint Louis?—A. The last time that I registered I was living on Ninth street, between Cass avenue and Mullanphy.

* * * * *

Q. Well, you had been previously registered; you so informed the judges, and they wouldn't permit you to make a transfer on that day?—A. No, sir; they wouldn't allow me to transfer.

It is not necessary to cite others, as we desire to show some of the abuses under this law in the interest of this contestant which should not be left unconsidered.

It appears from the record that the contestant failing in his proof to make a case, some unscrupulous men in his employ sought to take advantage of the O'Neil act to "manufacture evidence."

A drill class was formed for worthless vagabonds, who, on receipt of 75 cents, would swear that they "never had registered," and that on election day they had offered "to register and to vote" and were refused.

So many of this herd were driven on to one poll that contestee summoned all of its officers, Democrats, Republicans, judges, clerks, United States supervisors, and marshals, and they were all surprised to hear of any charge of unfairness or partiality or improper refusal of a voter at the poll in question.

The testimony of all these officers, of all positions and all parties, will be found in the Record on pages 1918, 1919, 1920, 1922, 1923, 1924, 1927, 1938, 1939, 1944, 1945, 1946, 1950, 1951.

These men who swore that these vagabonds must have deliberately lied were men of reputation and position in the city of Saint Louis. The United States supervisor had been an officer in the United States Army, and he testifies:

Q. Was there any man that came there that day, black or white, who produced satisfactory evidence that he had been in the city long enough, refused the privilege to register and vote?—A. None.

Q. Did you notice any bias or prejudice on the part of any judge or other officer at that poll toward any voter, white or black?—A. I did not.

Q. And it was your business to supervise that election?—A. Yes, sir; a general supervision over all of it.

Yet if we were to believe the vagabonds whose testimony is indicated in these formidable tables, and the majority of whom swear they were refused the privilege of registering and voting at this particular poll, you must disregard the oaths of gentlemen—Republican and Democrat—as respectable as ever appeared on a witness stand.

The record indicates that the witnesses referred to were not only drilled but deliberately, for lucre, perjured themselves.

A confession of this bad work was made by one E. A. Fenton, who had been employed as a canvasser on behalf of contestant in the contest.

William J. Anderson (Record, page 2267):

Q. What did Mr. Fulton say to you?—A. I had several conversations with him. He further said that it was a good scheme if he could get this part of the work, because he could hide up his own dirty work that him and Lewis done; they could both hide it; he seemed very anxious to hide up what they had done before; he thought his was a very fine scheme for that.

Record, page 2268:

Q. You gave him a list of the negro witnesses that had been examined in the cause, for the purpose of ascertaining whether it was true or not that they lived where they swore they did.—A. Yes, sir. He informed me that it was not necessary for him to leave his room.

Q. He informed you that he did not need to go out of his rooms for that business, because he knew whether they lied or had not lied?—A. Yes, sir.

Record, page 2268:

Q. Did he state to you that he could locate all the crooked evidence in behalf of the contestant in this case, Mr. Sessinghaus?—A. Yes, sir; because, he said, it was not necessary for him to leave his room in pursuit of this object; that he knew just where each one of them lived; there might be one or two that he didn't know; that he would probably have to work half an hour a day, but in regards to me he said I would have to go right to work and look up witnesses, and serve subpoenas on them.

Q. What did he say in regard to playing "hell" with Sessinghaus's case if he was placed on the stand against him?—A. He told me, I think it was about—yes, it was about two days and a half or three days before he left—he had seen a notification sent to J. T. Smith by myself and Lewis, that they was going to be witnesses in the Frost case, and he said if he got on the stand and swore against Sessinghaus he would "raise hell." He said that all the dirty work he knew as much about as anybody would be like to know, and he would "raise hell." It was about a day, I think, or a day and a half after that, that I met him again; it was on Monday; I can't remember the date of these conversations.

Now it appears from the record, page 2268, that this witness, after it became known that he was subpoenaed by contestee, was induced by some agents of the contestant to leave the city, so as to avoid process:

Q. Did he state anything to the effect that if he was paid he would skip the town?—A. Oh, yes; he said if Sessinghaus would put up the most money he would skip.

Record, page 2269:

Q. And he did skip?—A. I think he did skip, sir; I couldn't find him anywhere; I think it was on Monday that I seen him last and had a conversation with him about a quarter past eleven or twelve o'clock; he said that a man named Wiesehausen had told him he wanted to have a conversation with him, and he was going down to the corner of Fifth and Olive; so he walked down town to Fifth and Olive, and went up to Burgess's office, where we generally went and read the papers; he said, when he arrived at Jaccard's (it was just about one o'clock, anyhow it was one o'clock when he started down stairs) that Wiesehausen told him to come back. I don't know whether that was the young man or not (indicating a gentleman present in the room).

Q. Is this the Mr. Wiesehahn that he saw at that place—this gentleman sitting here, who is the agent of Mr. Sessinghaus?—A. I don't know the gentleman; he told me that the gentleman was connected with the Sessinghaus contest case.

Q. Well, you never saw him after that conversation?—A. No, sir.

Q. Although you was sent to bring him here?—A. Yes, sir; I had a subpoena in my pocket for him.

Q. Did he also say that he had got the money from Wiesehahn and then skipped?

Record, page 2270:

Q. Well, what did Lewis, one of the employés of Mr. Sessinghaus, tell you in regard to Fulton skipping the town after he got the money from Wiesehahn, if any?—A. Lewis told me this: he said I was a fool; he said that there was money paid on the Sessinghaus side, and that he (Fulton) had got it and skipped to Little Rock, Ark.

It further appears that other witnesses familiar with the perjury of most of the 86 were warned that if they testified to what they knew they would be harmed.

Record, page 2295:

Q. Where did he tell you that he was warned by threats of white men to keep his mouth shut in regard to the manner in which this Sessinghaus testimony was worked up?—A. That was in Reuben Armstrong's saloon—in his place; I was standing there when he came rushing in, and, seeing me there talking with a gentleman, he called me away and took me outside, pointed out this man, and says, "Do you know those men there?" I says, "No; I don't know them." He says, "You had better be careful; they are following us; one of them was in my room, and said the best thing for him (Lewis) to do was to keep his mouth shut, because there was going to be somebody killed in this Sessinghaus-Frost contest." I just told him to go right over there and ask them what they wanted. I finally went over to the three, and this man Flaherty says, "Yes, that is the man I saw there—"

Record, page 2295:

Q. Was the man with the blue spot under his eye about there?—A. Yes, sir; he was there; he is the man that Lewis pointed out as the man that had come to his room and warned him of danger.

Q. If Lewis would come down and give away these secrets?—A. If he testified in the Frost side of the case.

Q. When was it that Mr. Fulton told you that there was a deal of slick work done on the part of the Sessinghaus canvassers, and the reason he ceased to work for them was because they wanted him to do work that was too dirty for him to do?—A. That was when I met Fulton on the corner of Ninth and Christy avenue, when he told me that I should go and see Mr. Donovan.

Record, page 2296:

Q. That he had quit work for Sessinghaus because they requested him to do a thing that no man, white or black, should do?—A. He told me there was a great deal of slick work going on, and he quit because he done dirty work enough, and he didn't intend to do any more; that was the reason he gave me for quitting Sessinghaus's employ.

Q. When did he inform you that J. T. Smith had done this drilling, and that he had seen him do it?—A. Well, I think that was in the same conversation that we had there. It lasted about half an hour or so.

Jesse Woods (Record, page 2215):

Q. Who did he say drilled them?—A. Well, T. J. Smith. It was Smith, I know that; I know Mr. Smith if I saw him. I am not personally acquainted with him; I know him when I see him.

Q. What do you know in regard to negroes coming upon the stand two or three different times, under different names, and testifying in this case, thereby getting seventy-five cents each appearance?—A. There was seven men come to me who stated that it didn't make any difference at all about the name; they could just go there and swear and come away and then go back again. They used to get their money on Carr street, between Tenth and Eleventh streets, on the east side; as near as my knowledge can recollect that is what they told me. There was nobody told me nothing else about this; I was not spoken to by any man except these fellows; and they told me where they got their money.

Q. What do you know in regard to negroes coming two or three times on the stand?—A. I don't know any more than I have already stated to you. That is what they told me themselves; that they come two or three times to get money. They showed me the money they got—six bits to a dollar. I just come again those parties.

Record, page 2216:

Q. What did they say, Mr. Woods?—A. They said they voted under different names, out of that district or in that district, it didn't make any difference. They said they had to say that they wanted to vote for Sessinghaus and they wasn't let, and then they got their six bits for it. I never was up in this office before, gentlemen.

Record, page 2216:

Q. Now, did Lewis say anything in regard to these men saved from harm, provided that they would do this—give this class of testimony?—A. Lewis said he said to these men, whom he wanted to go up there, to swear that they wanted to register and vote—these colored men; he said to them that nothing could be done with them. I said this wouldn't do me. I wouldn't go there and swear to a lie; if I did I would criminate myself. I did not believe he could find the poorest colored man in the city that would do that—that is, go on the stand and swear to a lie. But he went on to say that he had taken these men out there, and that he had been given a quarter for bringing each man up. I said that might be done by some colored people, but you could never get me to do it.

Q. You don't seem to get my question; what did he say about keeping them from any harm for doing this thing?—A. Lewis furthermore said that he told these parties that they could not be hurt if they testified, because these that they testified for would be afraid to hurt them. To me he was going to give the whole plan, if I wanted anything to do with it. I told him I didn't want to know anything about it; didn't want to have anything to do with it.

Q. This is Lewis we are talking about—this man that was employed by the contestant in this case, Mr. Sessinghaus?—A. Yes, sir; he had been with Mr. Smith, and he and Smith had done this; they were both working for Mr. Sessinghaus's side; they were going to defeat Mr. Frost. I believe he said they had twenty days to Frost's term.

Q. Did he state whether Mr. Smith drilled these witnesses?—A. Yes, sir; he said they were drilled by Smith somewhere on Carr street, or Biddle street, between Ninth and Tenth streets.

This testimony is of much significance if taken in connection with that given by the officials—men of prominence in the city of Saint Louis—who swore that no one was improperly refused registration on that election day.

This particular election was provided with many safeguards. United States marshals and United States supervisors were appointed to every poll; their duty is plainly stated in the United States statutes. They were all furnished with special instructions by the officers of the United States, and yet in all their reports to the chief marshal and the chief supervisor there is not one single act of improper conduct reported at any poll.

Inasmuch as this district, with one single exception, has always sent a Democratic Representative to Congress, we sought particularly for any grounds that could justify the claim that a Republican could have to representing it. Although there are three thousand pages of testimony, yet the committee itself in all that cannot find sufficient facts to justify the unseating of the contestee without declaring as unconstitutional the laws governing these elections.

We find these laws reasonable and valid and never questioned in any court of that State. Hence we must find that contestant's cause should be dismissed, and therefore recommend the adoption of the following resolution:

I. *Resolved*, That R. Graham Frost was duly elected as a Representative to the Forty-seventh Congress of the United States from the third Congressional district of Missouri, and is entitled to occupy a seat in this House as such.

A D D E N D A.

In matter of contest.

GUSTAVUS SESSINGHAUS, CONTESTANT, }
vs.
R. GRAHAM FROST, CONTESTEE. }

In the third Congressional district of Missouri.

Now comes said R. Graham Frost, by his attorneys, Donovan & Conroy, and moves your honorable body to dismiss the petition of Gustavus Sessinghaus, contestant herein, for the reasons herein set forth—

First. The same was not served on contestee within thirty days after the result of the election in said third Congressional district of Missouri had been by the proper authorities determined.

Second. Because the said notice of contest does not specify particularly the grounds upon which contestant relies.

Third. The same does not state facts in such manner or form as constitutes a notice of contest under the law for such cases made and provided.

DONOVAN & CONROY,
Atty's for Contestee.

In matter of contest.

GUSTAVUS SESSINGHAUS, CONTESTANT, }
vs.
R. GRAHAM FROST, CONTESTEE. }

In the third Congressional district of Missouri.

Now comes said R. Graham Frost, by his attorneys, Donovan & Conroy, and moves your honorable body to dismiss or strike out the second, third, fourth, fifth, sixth,

ninth, eighth, ninth, tenth, eleventh, twelfth, thirteenth, sixteenth, seventeenth, and eighteenth specifications in notice of contest in above-entitled cause, because the same do not set forth the grounds of contest with such particularity as to prevent a surprise being practiced upon the contestee, or with such particularity as to put him on a proper defense.

DONOVAN & CONROY,
Att'ys for Contestee.

Served this answer and motions on answer in the city of Saint Louis, Mo., on the 1st day of January, 1881, by delivering a true copy thereof to Gustavus A. Sessinghaus, the within person, contestant.

ISAAC M. MASON, Sheriff,
By JOSEPH GREENWALD, Deputy.

(Indorsed:) No. 2. Sessinghaus vs. Frost. Answer. Donovan & Conroy, att'ys for contestant.

before the House of Representatives of the United States, Forty-seventh Congress.

GUSTAVUS SESSINGHAUS, CONTESTANT, }
vs.
R. GRAHAM FROST, CONTESTEE. }

In the matter of contest in the third Congressional district of Missouri.

Now comes R. Graham Frost, contestee, by his attorneys, Donovan & Conroy, and moves that the dispositions taken for Gustavus Sessinghaus, contestant, before Frank Kraft, esq., notary public, in the city of Saint Louis, Missouri, be suppressed. And for grounds of this motion this contestee states that without the knowledge or consent of contestee or his counsel—

I. That since the taking of the same by said Frank Kraft, esq., they have been out of his care, custody, and possession, and were not safely kept and preserved, as required by law.

II. That since the taking of the same they have been in the possession of strangers to the proceedings, who were in nowise under the control of said notary.

III. That they have been left open and exposed on the tables in the office of the counsel for the contestant, and by him, and by his office-boy, and by strangers to the same, read, handled, written upon, and altered.

IV. That all of said depositions since the taking thereof have been withdrawn from the care of the notary by one of the counsel for contestant, and were in his care, part for many days and part for weeks, and were by him mutilated, changed, and altered.

V. That the alterations and changes made were material in this, that a large portion of the contestant's case was concerning the accuracy of the registration lists, both with regard to the names and residences of voters, and the alterations in the spelling of a name or the number of a house, to make which full opportunity and license was given by the notary, might serve the purpose of contestant in establishing the validity of voters for himself or impeaching votes for contestee.

VI. That for the reasons stated in the accompanying affidavits the integrity of said depositions has been destroyed.

DONOVAN & CONROY,
Att'ys for Contestee.

Affidavits in support of motion.

GUSTAVUS SESSINGHAUS, CONTESTANT, }
vs.
R. GRAHAM FROST, CONTESTEE. }

In the matter of contest in the third Congressional district of Missouri.

FRANK J. DONOVAN, being duly sworn, on his oath states as follows:

I was of counsel for R. Graham Frost in the Congressional contest aforesaid. Some time prior to the 10th day of November, 1881, I heard that the testimony taken in said contest had, since the same was given, been out of the custody of the notary charged with the safe custody of the same; that it had been left with Lyne Metcalfe, jr., one of the counsel for Mr. Sessinghaus, and had been handled and used by him in the absence of the notary.

On said 10th day of November last, R. Graham Frost called upon me, and I communicated to him the strange information I had received. While we were conversing on the subject Lyne S. Metcalfe, jr., counsel for contestant came into the office. I at once said to him, "Mr. Metcalfe, you must have your brief on the contest prepared, inasmuch as you have spent the summer reading over the testimony taken in the case." He replied, "Oh, no! I did not have the testimony. I had only the depositions of one day, and that was the day the city ordinances were introduced. I wanted to see if the ordinances were reported correctly."

I stated what I had been given to understand, but he denied that he had had any of the testimony, with the exception of that taken on one specified day.

Mr. Frost made a note of Mr. Metcalfe's answer.

On the following day Notary Kraft called on me on some business and I inquired of Mr. Kraft if it was not the fact that Mr. Metcalfe had all of the testimony since it was written up. He was very reluctant to answer, and noticing this, I resolved to press the inquiry. He finally told me that before he had gotten out of bed he received a letter from Mr. Metcalfe, requesting him to be sure to see him before he would call on me.

He subsequently said, "I do not propose to lie for anybody. The fact is that Mr. Metcalfe had, after it was all written up, all of the testimony, with the exception of that of one day."

I then stated that Mr. Metcalfe had denied that such was the case. He replied that he could not help that; that he had two letters in which he acknowledged the receipt of much of the testimony, and other letters requesting that more be sent to him, and that all of the requests of his letters were complied with.

The notary further stated that Mr. Metcalfe ought to have known whether it was right or wrong for him to permit the depositions to be out of his custody; that Mr. Metcalfe insisted on having them, and that he complied with his demand.

The notary further stated that he wrote much of the evidence from his notes during his summer stay in Kansas; that while absent from the city Mr. Metcalfe continued writing for more of the testimony, and it was sent to him.

On being further interrogated, he said he had often seen the testimony lying open on the desk of Mr. Metcalfe, and had seen his office boy handling it. He did not know who else may have handled it, but it lay exposed, and any one going in or out of the office could have access to it.

I asked Mr. Kraft if any alterations had been made, and he said that Mr. Metcalfe had written on the margins, and had made corrections in names and localities, and had erased a portion of Dr. McCarthy's evidence, but that he had reinstated the latter.

This affiant states that it will appear from the testimony that a great portion of the contestant's evidence consists of misspelt names and places of residence; that it was the purpose of contestant to take advantage of typographical errors to disfranchise voters; that it appears from the affidavit of Notary Kraft that he permitted Mr. Metcalfe to write the names and localities as he saw fit, and his changes were adopted; that such changes so permitted to be made address themselves directly to the merits of the contestant's case, as it puts it within the power of Mr. Sessinghaus's attorney to so spell the names of persons and write the numbers of their residence as to place them outside of their proper election precincts, and thus disfranchise voters in sufficient numbers to secure the election of Mr. Sessinghaus.

FRANK J. DONOVAN.

STATE OF MISSOURI,

City of St. Louis, ss:

Sworn to and subscribed before me by the said Frank J. Donovan this twenty-eighth day of December, A. D. 1881.

Witness my hand and official seal.

[SEAL.]

C. D. GREENE, JR.,
Notary Public.

GUSTAVUS SESSINGHAUS, CONTESTANT, }
18.
R. GRAHAM FROST, CONTESTEE. }

In the matter of contest in the third Congressional district of Missouri.

R. GRAHAM FROST, being duly sworn, on his oath states that:

I was present at the office of Donovan & Conroy, in the city of St. Louis, on the 10th day of November, 1881.

Mr. Donovan informed me that he had heard that all the depositions given on behalf of Gustavus Sessinghaus in his contest had, since they were taken by Notary Kraft, been in the possession of his counsel, Lyne S. Metcalfe, jr.; that also all depositions taken on behalf of myself had, at the request of Lyne S. Metcalfe, jr., been delivered to him by Notary Kraft.

We were conversing about this extraordinary proceeding when Lyne S. Metcalfe, jr., entered the office.

Mr. Donovan said to him, "Mr. Metcalfe, you must have your brief on the contest ready prepared, for I understand that you have during the summer read over all the testimony."

His reply was, "Oh, no! I did not have the testimony; I had only my depositions one day, and that was the day the city ordinances were introduced. I wanted to see if the ordinances were reported correctly."

I made a note of this answer just as it fell from Mr. Metcalfe's lips; and when Mr. Donovan talked with him again about having understood that he had had the testimony, he positively denied that such was the truth.

R. GRAHAM FROST.

STATE OF MISSOURI,

City of St. Louis, ss :

Sworn to and subscribed before me by the within-named R. Graham Frost, this twenty-eighth day of December, A. D. 1881.

Witness my hand and official seal.

[SEAL.]

C. D. GREENE, JR.,
Notary Public.

EXHIBIT A.

ST. LOUIS, Aug. 4, 1881.

FRANK KRAFT, Esq., or HIS BROTHER :

I have just returned from the North and want more manuscript to work on. I return by messenger the testimony taken Feb. 1st, 2d, and 3d. Please send me by bearer (or, if you are not at home, by messenger) as soon as possible the testimony for six or eight days following the 3d of Feb. I don't know what fees they may be, for a Sunday probably intervenes. I guess you had better send 8 days' testimony, for I want to work pretty steady on it now.

Yours, truly,

L. S. METCALFE, JR.

EXHIBIT B.

ST. LOUIS, Aug. 8, 1881.

FRANK KRAFT :

DEAR SIR : I return you testimony taken Feb. 4th and 5th. I want to retain that of Feb. 7th for a few days, as I have a copyist at work copying names from it. Will return it when I return next batch. Please send me testimony for at least six days, and, if you can, eight days. I finish it up so fast that it will keep me sending all the time. And oblige—

Yours, truly,

L. S. METCALFE, JR.

EXHIBIT C.

ST. LOUIS, Aug. 18, 1881.

MR. CRAFT : I send you by messenger the testimony taken Feb. 7, 8, 9, 10, 11, and 12. That is all I have received, except that for Feb. 14. The latter I am on, and will remain until I return next batch. Please send by bearer, or as soon thereafter as possible, testimony for the following eight or nine days ; that is Feb. 15, 16, 17, 18, 19, 21, 22, and 23. And oblige—

Yours, truly,

METCALFE.

When does Frank return ?

GUSTAVUS SESSINGHAUS }
vs.
R. GRAHAM FROST. }

Contest in the third Congressional district of Missouri.

FRANK KRAFT, of St. Louis, Mo., being duly sworn, on his oath, states:

I was the notary public selected by Gustavus Seissinghaus by and before whom the positions for him in the above-entitled cause were taken. Said testimony was taken in the office of Lyne S. Metcalfe, jr., esq., southeast corner of Fifth and Olive streets, in the city of St. Louis, and was transcribed by myself and assistants at my office on the northwest corner of Fifth and Olive streets, and at my residence, 2635 South Seventh street, in the city of St. Louis aforesaid ; also a portion of the contestee's testi-

mony was by me transcribed near Chanute, Kansas, to which latter place I took my notes during the last summer, and continued the transcription of the testimony in this contest. Before the close of taking this testimony, being some time before April 22d, 1881, I spoke to both counsel, asking them to allow me the use of the several memorandums from which names and addresses had been read during the course of the depositions, as I desired to correct the spelling of names of persons and of localities. On or about the — day of —, 1881, after the close of the actual taking of evidence, I again renewed my request, this time in writing, to the agent of Mr. Seessinghaus, and in answer thereto was waited on by Mr. Metcalfe, of counsel for Mr. Seessinghaus, who informed me that he would save me that labor—the labor of going over his memorandum—that he would like to take the testimony as transcribed, look over it, and correct the spelling of proper names. What my answer was to this proposal I do not now remember; at any rate no testimony was delivered to him, because none had at that time been fully completed (it having been dictated by me to several amanuenses). As I was not versed in regard to the rules which govern depositions taken in Congressional contest cases, I made it a point to see Mr. Pollard, the other of Mr. Seessinghaus's counsel, and from him received substantially these words: "I don't see what he wants with it; I am sure I don't want to touch it; let him have it if he wants it." Thus counseled by those whom I thought very well able to take care of their case, I permitted Mr. Metcalfe from that time on, as rapidly as the manuscript was turned in to me by my clerks, to have in his possession, for review and correction of the spelling of proper names, all the manuscript of the contestant's case, with the exception of one day in rebuttal, which I showed him, but which was not examined by him. I wish again to state that in permitting this inspection of my record by the counsel for the contestant, I was acting under the impression that neither of the counsel for the contestant would ask me to do that which would in any degree prejudice their case.

From time to time, therefore, in pursuance of his request, I gave to Mr. Metcalfe the several depositions taken on behalf of the contestant; upon returning these he would receive others in their stead. While I was out of the city during the summer he wrote me frequently to my residence, requesting that depositions following those already inspected by him be sent him. These requests were also complied with in so far as the testimony requested by him was ready for review. Some of the letters referred to above calling for such depositions I found on my return to this city, and I append them hereto, marked Exhibits A, B, C, respectively. Others to the same purport were destroyed or mislaid.

I called frequently at the office of Mr. Metcalfe, and saw the depositions I had given him lying on his desk and tables, and saw his office-boy handling them. They were open and exposed, and any person could have access to them. I did not object to this for two reasons, the first being that I deemed him as much interested as myself in preserving their integrity, and the second reason being that I intended to go over every page of the depositions after they were returned to me by Mr. Metcalfe.

On or about the 10th or 12th of November, 1881, when I had completed my revision and was about to forward the testimony to the clerk of the House of Representatives at Washington, I received a note from Mr. Metcalfe early in the morning, before I was out of bed, asking me to please call at his office on that day at a certain hour named, and to be sure and do so before calling at the office of counsel for Mr. Frost. I did so call at the time stated, and found Mr. Metcalfe absent. I waited a little while. I again called during the day, but was still unable to find him in. As I was very anxious to complete the work and ship the testimony on to Washington, I thereafter called on Mr. Donovan, of counsel for Mr. Frost, with a view to procuring a settlement of contestee's bill, and was then asked directly by Mr. Donovan if Mr. Metcalfe had not had all the depositions taken by the contestant, and I then made true answer to his question.

The testimony as transcribed by myself and assistants was very voluminous, being some 16,000 pages if reduced to ordinary long-hand writing, but I exercised especial care to compare the depositions as returned to me by Mr. Metcalfe with my original short-hand notes, and thus was enabled to see what changes had been made in the manuscript. The only alterations so made by Mr. Metcalfe that I discovered, aside from the mere correction of proper names, was found in the testimony of one Dr. McCarthy, a witness for the contestant, and these alterations consisted in simply erasing certain profane words frequently made use of by that witness in giving his testimony. When that witness was yet in the room, after giving his testimony, counsel for contestant requested of me, as did also the witness, to leave out such profanity, but counsel for contestee positively refused to allow this. I then stated to the witness that I would not write the objectionable words in full, but would simply indicate them, and in this manner they appeared in my manuscript. I was therefore surprised to find this language erased, and of course, immediately reinstated the language as given. With this single exception, I do not now recall that any other changes were made in the testimony aside from the simple correction of proper names, and these corrections in many instances were made in the margin and in ink, and were not erased by me; others, in pencil, will also still be found in the margin.

will state also that had the request been made of me by counsel for the contestee a like privilege to inspect their depositions, acting under the same ideas I should have suffered them to do likewise; but such request was never made, and no single copy of testimony taken in this case was in the possession of or examined by the counsel for the contestee, Mr. Frost.

asmuch as it would seem from the course pursued by myself in permitting this testimony to go into the hands of Mr. Metcalfe, that I was very negligent of my duty as a notary, I desire again to add that I hold myself blameless in this matter, being trusted to the opinion of counsel for contestant, who I felt assured would not adopt or countenance a course of procedure in reference to their testimony which could in any manner prejudice or imperil the case they were seeking to establish.

FRANK KRAFT.

STATE OF MISSOURI,

City of St. Louis, ss:

Sworn to and subscribed before me this twenty-eighth day of December, A. D. 1881.

Witness my hand and official seal.

[SEAL.]

C. D. GREENE, JR.,
Notary Public.

are the House of Representatives of the United States, Forty-seventh Congress.

GUSTAVUS SESSINGHAUS, CONTESTANT, }
vs.
R. GRAHAM FROST, CONTESTEE. }

In the matter of contest in the third Congressional district of Missouri.

Now comes Gustavus Sessinghaus, contestant, and, by his attorney, H. M. Pollard, presents the following affidavit:

In the matter of the motion to suppress depositions of contestant.

SESSINGHAUS }
vs.
FROST. }

Before the Committee of Elections, Forty-seventh Congress.

, James Walter Metcalfe being duly sworn, on my oath say that I am 17 years of age; that I have always lived in the city of St. Louis; that for some time past I have been acting as clerk and office boy for Mr. L. S. Metcalfe, jr., attorney for Gustavus Sessinghaus; that at various times during the months of Sept. and Oct., 1881, Mr. Frank Kraft, the notary in the case of Sessinghaus v. Frost, came to the office of said L. S. Metcalfe, jr., bringing with him parts of the testimony taken for contestant in said case; that the said testimony, when received by Mr. Metcalfe, and when not being examined by him in the office, was placed and carefully kept in the safe in said office; that said safe is a strong one, to which the said Lyne S. Metcalfe, jr., only, and no one else, had access; that Mr. Metcalfe seemed to exercise the greatest care and caution in the keeping of said testimony; that he repeatedly cautioned me to be careful of it, and not allow any one to handle it; that while said testimony was in the said office the said Lyne S. Metcalfe, jr., examined it for the purpose of briefing it; that no one in or about the office except Mr. Metcalfe ever handled or had anything to do with the said testimony; that the said testimony never was out of the said office in the absence of the said Lyne S. Metcalfe, jr., from the office, except at times when the said Mr. Metcalfe, having completed it, left it with me, to be called for by the said Frank Kraft, and at such times the said testimony was carefully wrapped up in brown paper and tied securely; that the said testimony never was open in the said office except while Mr. Metcalfe was present. Although I had nothing to do with the said testimony except as aforesaid, I frequently saw Mr. Metcalfe making examination and briefing said testimony; that I occasionally saw Mr. Metcalfe making pencil marks on the margin of said testimony, and that I never saw him use a pen in connection with said testimony, and that I never saw him make a change or erasure in the body of said testimony. I further state that it has been my duty and custom to remain constantly at the office of said L. S. Metcalfe, jr., from eight o'clock in the morning until five o'clock in the evening, and that from my own knowledge the said testimony was kept with the greatest regard to its safety and integrity.

J. W. METCALFE.

Subscribed and sworn to before me this 3d day of January, A. D. 1882.

[SEAL.]

A. A. PAXSON,
Notary Public.

(Indorsed:) Sessinghaus *vs.* Frost. Affidavit in behalf of contestant. Affidavit of J. W. Metcalfe. Filed by N. S. Paul, clk' Com. of Elections.

In the matter of contest for seat in 47th Congress from the 3d Congressional district of Mo.

GUSTAVUS SESSINGHAUS }
v.
R. GRAHAM FROST. }

Frank Kraft, being sworn, says he was employed by both sides in said cause to take the testimony; that after Mr. Metcalfe returned to him the testimony he carefully compared every sheet and page with his original short-hand notes of the evidence, and wherever the marginal suggestions of Metcalfe concurred with his said notes they were adopted by affiant and were by him written in ink. That said marginal suggestions were in pencil except, probably in one or two instances. That there were no alterations made in the testimony while it was out of affiant's hands. That the only thing done to it were marginal memoranda, which were made in pencil, save in one or two instances, which affiant now thinks were in ink, and a pencil-mark drawn under or across the profane words of witness Dr. Justin McCarthy. The testimony was absolutely untouched in any way save as above stated. And affiant carefully examined each sheet as he did it up to forward to Washington; and when the same was placed in the box and shipped to Washington it was exactly the testimony given and nothing else.

FRANK KRAFT.

STATE OF MISSOURI,
City of St. Louis:

Subscribed and sworn to before me this 3d day of January, 1882.

[SEAL.]

CHRISTOPHER P. ELLERBE,
Notary Public, City of St. Louis, Mo.

(Indorsed:) Sessinghaus *vs.* Frost. Affidavit in behalf of contestant. Affidavit of Frank Kraft. Filed by N. S. Paul, clk' Com. on Elections.

In the matter of the motion to suppress depositions of contestant.

SESSINGHAUS }
v.
FROST. }

Before the Committee of Elections, Forty-seventh Congress.

I, Charles M. Switzer, being duly sworn, on my oath say that I am an attorney at law in the city of St. Louis; that I have for the past eight months occupied the same offices with Lyne S. Metcalfe, jr., attorney for Gust. Sessinghaus; that I am intimately acquainted with the said Metcalfe; that though frequently during the months of August, September, and October, 1881, I observed Mr. Metcalfe making examination of papers which I thought from their size were papers in connection with the contested election case of Sessinghaus *vs.* Frost, I never knew that the said papers were the official testimony in the said case; that I never handled or examined said papers; that I never saw any one handle or examine said papers except the said Metcalfe; that I never saw said papers lying around open or loose in said office except when in use by the said Metcalfe; that the said papers seemed to be kept carefully by the said Metcalfe, with no apparent chance of changing or tampering with them on the part of any one. I further say that during the periods above indicated it was my custom to be in said office during a large part of each day. I further say that I am a Democrat.

C. M. SWITZER.

Subscribed and sworn to before me this 3d day of January, A. D. 1882.

[SEAL.]

A. A. PAXSON,
Notary Public.

(Indorsed:) Sessinghaus *vs.* Frost. Affidavit in behalf of contestant. Affidavit of C. M. Switzer. Filed by N. S. Paul, clk' Com. on Elections.

In the matter of the motion to suppress depositions of contestant.

SESSINGHAUS }
vs. }
FROST. }

Before the Committee on Elections, Forty-seventh Congress.

Jayne S. Metcalfe, jr., being duly sworn, on my oath say that I am, and have been the 3d day of November, A. D. 1880, attorney for Mr. Sessinghaus in the con- election case of Sessinghaus v. Frost; that after the evidence in the case was by the notary public, Frank Kraft, the latter requested of me the use of certain ~~memoranda~~ made by me in the taking of testimony, for the purpose of correcting the of proper names which appeared in the testimony for contestant; that have for the same at my office, and desiring also to brief the testimony, I requested said notary to bring to my office the testimony as copied from his short-hand notes at the time of taking the same, the understanding being that in the casual examination of the testimony for the purpose of briefing it, if I discovered any discrepancies in the spelling of names or in the residences of voters between that manuscript he notes made by me at the time the testimony was given, I should upon the in of the sheets upon which the testimony was written indicate in pencil-mark method of spelling and the residence as shown by my memoranda, it being further understood that the said notary would go over all the testimony again, compare my suggestions with his original short-hand notes, and if said suggestions were found to correct he would change the manuscript in accordance therewith. It was further understood that I should keep such testimony, while in my possession, carefully and from any chance or opportunity for tampering. In accordance with this understanding, the said notary left at my office, in the city of St. Louis, on the southeast corner of Fifth and Olive streets, from time to time, most of the testimony taken for contestant, the said testimony being brought to my said office and returned from there, wrapped up carefully in strong brown paper and tied securely; that at all times during the day and night when such testimony was not being examined and briefed by and with the exception of once or twice when said testimony was wrapped up during the call of the notary as hereinbefore stated, the same was carefully wrapped and locked securely in my safe in said office; that said safe is a large iron with a combination lock; that no one except myself has a key and access to safe; that the said testimony was never at any time taken out of my office by one except the said notary or his agent, when said testimony was returned; that in said office, and nowhere else, I made a hasty examination of said testimony the purpose of briefing it; that in a number of instances where I found that his manuscript differed from the memoranda made by me at the time the testimony was taken, I indicated in the margin in pencil what my memoranda showed the testimony to have been, merely to call the attention of the notary to the same, at the same drawing a line in pencil under the words which differed from my memoranda; in no instance did I alter, change, or erase words or sentences or names in the of the said testimony, but merely made marginal suggestions, and that the testimony itself was left absolutely intact by me; that I made no pen and ink corrections ever, and that in the case of one witness for contestant, as referred to in the affidavit of the notary, I drew pencil lines under certain very profane words used by the witness, which words were in no respect material to the case, but that even in that case left the words intact, only drawing a pencil line under them. I further state that turned to the said notary the testimony absolutely intact and unchanged, leaving the notary to make the changes suggested only so far as they were found to agree with his original notes. I further state that the notary afterwards assured me that suggestions were in most instances in harmony with his original notes, and were to be made. I further say that no one in or about my office, except my office knew the fact that I had such testimony there until after all the said testimony returned to the said notary and sent on to Washington; that my said office boy the value of said testimony and the necessity of watching and keeping it safely; while I was absent from my said office said testimony was in my said safe as said, with this exception, that in one or two instances it was wrapped up and fully tied, awaiting the call of the notary; that in no instance did I leave said testimony open on my desk during my absence. Further state that in the examination of said testimony I used every precaution care to keep it safely and free from any possible tampering with, and that, as an attorney, I felt the necessity of the utmost good faith and fair dealing, being only anxious that the said testimony should be correctly reported so far as was possible, having leisure time during the summer months in which to prepare materials for trial.

I further state that the use of the testimony at my office in the manner indicated above was, according to the habit and custom of attorneys in this city, a proper one; that it is a common thing for attorneys to take to their offices depositions and written evidence for the purpose of making examination and preparing briefs, it being a practice which no reputable attorney would take advantage of for the purpose of changing testimony; and without the strongest evidence of actual alteration, no high-minded attorney would charge another with having committed so contemptible an offense.

I furthes state that the said Frank Kraft, as notary, was employed by the contestee as well as the contestant to take the testimony in this case.

LYNE S. METCALFE, JR.

Subscribed and sworn to before me this 3d day of January, A. D. 1882.

[SEAL.]

A. A. PAXSON,
Notary Public.

(Indorsed:) Sessinghaus vs. Frost. Affidavit in behalf of contestant. Affidavit of Lyne S. Metcalfe, jr. Filed January 6, 1882. N. S. Paul, clerk of Committee on Elections.

In the matter of the motion to suppress deposition of contestant.

SESSINGHAUS }
vs.
FROST. }

Before the Committee on Elections, Forty-seventh Congress.

I, John R. Farrar, being duly sworn, on my oath say that I am an attorney at law in the city of Saint Louis; that for the past two years I have had a desk in the law office of Lyne S. Metcalfe, jr., attorney for Gust. Sessinghaus; that I have known the said Metcalfe intimately; that my desk in said office has always been placed close to the desk of said Lyne S. Metcalfe, jr., that at various times during the months of August, September, and October I observed Mr. Metcalfe examining and abstracting some papers, which I thought were papers used in the case of Sessinghaus vs. Frost; that I never examined or in any way handled said papers; that I never knew, except as hereinafter stated, what the said papers were or that they were the official testimony in the said case; that Mr. Metcalfe seemed to be remarkably careful of the manner in which he kept said testimony; that I never saw said papers out of the safe in the office except when Mr. Metcalfe was present and making an examination of them; that I never saw any one handle said papers except the said Lyne S. Metcalfe, jr.; that the said papers never were left open on the desk of said Metcalfe in his absence, or in any other part of said office. I further say that I never knew the said paper was official testimony in the said case, but on one occasion during the aforesaid period the said Metcalfe told me that he was getting up the brief in the Sessinghaus-Frost case; that the papers he was using were important and should be safely kept, and that he would be obliged to me if I would say nothing to any one in or about the office as to what he was doing. I further say that it was my custom to remain in the said office during said period almost constantly. I further say that I am a Democrat in politics.

JOHN R. FARRAR.

Sworn to and subscribed before me this 4th day of January, 1882. My commission expires June 29th, 1885.

[SEAL.]

FRANK OBEAR,
Notary Public, City of Saint Louis.

(Indorsed:) Sessinghaus vs. Frost. Affidavits in behalf of contestant. Affidavit of John R. Farrar. Filed by N. S. Paul, clerk Com. on Elections.

GUSTAVUS SESSINGHAUS, CONTESTANT, }
vs.
R. GRAHAM FROST, CONTESTEE, }

Before Committee on Elections, Forty-seventh Congress.

Now comes R. Graham Frost, by his attorneys, and represents that on this day the committee adopted the following resolution:

"Resolved, That the motion of the contestee for the suppression of the testimony in

id cause be overruled and the testimony be ordered printed without prejudice to
ther party."

This contestee respectfully protests against said order to print, as the same cannot
be executed without prejudice to this contestee, for the reason that if the question of
impering with the depositions is still open the very evidence of the changes, alter-
ations, and erasures will, in passing through the printer's hands, be destroyed or so
altered, marked, and handled that no satisfactory investigation can be had.

This contestee protest that as alterations of only one class were examined, and if
is proposed to investigate the many others not examined, that it should be done
now before these papers are worked over or handled by others.

Respectfully submitted.

R. GRAHAM FROST,
By DONOVAN & CONROY,
His At'tys.

WASHINGTON, Jan. 17th, 1882.

(Indorsed:) Sessinghaus vs. Frost. Protest against the order to print. Filed Jan'y
1, '82. N. S. Paul, cl'k Com. on Elections.

USTAVUS SESSINGHAUS }
vs.
R. GRAHAM FROST. }

Contest in the Forty-seventh Congress.

Frank Kraft, of the city of St. Louis, Mo., on his oath states that he was the notary
employed by contestant and contestee in the above-entitled cause.

That all, or very nearly all, of the transcript of the testimony taken on behalf of
the contestant was made by my several assistants and from short-hand notes dictated
to them by me.

That in many instances breaks and gaps were left in the transcript so turned in by
them, by reason of their imperfect notes or inability to read their notes, the same
being left to be supplied by myself when the work of revision was instituted.

That this imperfect, partly open, uncorrected copy of my assist-
ants' notes was the manuscript submitted to Mr. Metcalfe and none other.

That thereafter, the same being returned to me by Mr. Metcalfe, I began and com-
pleted my revision, comparing and correcting each page of the manuscript from my
original short-hand notes.

That in this work of revision, comparison, and correction I was in no instance
swerved by the marginal notes made by Mr. Metcalfe, giving my original short-hand
notes the preference, save and except only in the spelling of proper names.

That I did not begin to revise and correct the depositions in this case until after
their return to me by Mr. Metcalfe, and having once entered upon this work I used
my original short-hand notes, erasing, altering, and interlining as they showed the
depositions to have been given, and immediately thereafter signing and sealing each
page's proceedings; and no one single page of the depositions given in this cause was
ever again out of my possession until it was forwarded by me direct to the Clerk of
the House of Representatives, at Washington, D. C.

That the depositions of the contestee, Mr. Frost, were not at any time in the posses-
sion of Mr. Metcalfe, or any one else interested in this cause, until they were opened
and inspected at Washington.

That in determining the spelling of proper names occurring in the depositions given
in behalf of the contestee, Mr. Frost, I made reference to and had the use of original
memoranda made by counsel for contestee before and during the progress of taking
said depositions.

FRANK KRAFT.

STATE OF MISSOURI,
City of St. Louis, ss:

Subscribed and sworn to before me this 19th day of January, A. D. 1882.

[SEAL.]

CHRISTOPHER P. ELLERBE,
Notary Public.

(Indorsed:) Affidavit of Frank Kraft. In case of Sessinghaus vs. Frost. Referred
to 2d subcom. Filed Jan'y 24, '82. N. S. Paul, cl'k Com. on Elec's.

SESSINGHAUS }
 vs. }
 FROST. }

Before Committee on Elections, 47th Congress.

Frank Kraft, being duly sworn, on his oath states:

It is not my intention in giving affidavits on the motion to suppress to change in any respect the affidavit first made by me in this matter. As I stated then, I desired the use of memoranda from which names and address had been read during the course of the depositions, as I desired to correct the spelling of names of persons and of localities.

When I called on counsel for contestee, Mr. Donovan, he allowed me to take whatever I needed or requested, but he did not know what use I made of same, or give me any directions, or make any requests, and never interfered with me in any way whatsoever in the faithful performance of my duty as an officer.

Lyne S. Metcalfe, jr., importuned me to let him have the testimony itself as transcribed, and I did give him possession of it for review and correction of the spelling of proper names. I trusted to his integrity to write correctly the names of persons and localities as given by the witnesses. I could rely on my notes of testimony in all respects but this, and hence I took Metcalfe's written suggestions, believing when I adopted them that I was giving names and localities as they were given by the witnesses on the stand.

FRANK KRAFT.

STATE OF MISSOURI,
City of St. Louis, ss:

Sworn to and subscribed before me this thirtieth day of January, A. D. 1882.
 Witness my hand and official seal.

[SEAL.]

C. D. GREENE, JR.,
Notary Public.

(Indorsed:) 47th Congress. Committee on Elections. Gustavus Sessinghaus & R. Graham Frost. Affidavit of Frank Kraft, made Jan. 30, '82. Filed Feb'y 1, '82. N. S. Paul, cl'k Com. on Elec's.

ROBERT SMALLS vs. GEORGE D. TILLMAN.

FIFTH CONGRESSIONAL DISTRICT OF SOUTH CAROLINA.

Contestant charges that the vote as cast was not truthfully set out in the statement of the State board of canvassers; that large numbers of votes cast for him did not enter into the result as stated therein; that large numbers of ballots were counted for contestee that were not lawfully cast for him; that polls were returned for him that should have been rejected; that a large number who desired to vote for contestant were prevented from so doing by reason of violence and intimidation; and that United States supervisors of election were prevented from performing their duties.

Held, That no legal election was held in Edgefield County, because the will of the electors was suppressed by violence and intimidation, and the return must be rejected.

That the vote of the other counties should be corrected as shown by the evidence, on account of intimidation and violence and stuffing of ballot-boxes.

The House adopted the majority report.

, 1882.—Mr. WAIT, from the Committee on Elections, submitted the following

R E P O R T:

Committee, having had under consideration the contest for a seat in the House of Representatives from the fifth Congressional district of Carolina, submit the following report:

District is composed of the counties of Colleton, Beaufort, Barnegfield, Aiken, and Hampton.

Contestee, George D. Tillman, holds the seat by virtue of a certificate issued to him by the governor, predicated upon the statement of the district made by the State board of canvassers, which shows:

FIFTH CONGRESSIONAL DISTRICT.

| Counties. | Names of candidates. | | |
|-----------|----------------------|----------------|-------------|
| | George D. Tillman. | Robert Smalls. | Scattering. |
| ..... | 3,475 | 2,776 | ..... |
| ..... | 391 | 5,978 | 2 |
| ..... | 5,422 | 2,445 | ..... |
| ..... | 6,467 | 1,046 | ..... |
| ..... | 4,980 | 1,467 | ..... |
| ..... | 2,590 | 1,575 | ..... |
| | 23,325 | 15,287 | 2 |

SOUTH CAROLINA,
Office of Secretary of State:

Sims, secretary of state, do hereby certify that the above is a true copy of the returns in the fifth Congressional district in said State, as returned by the county board of canvassers for the counties composing the fifth Congressional district, and which returns are now of record in this office.

Given my hand and the seal of State, at Columbia, this 16th day of February,

R. M. SIMS,
Secretary of State.

Contestant, Robert Smalls, contends that this does not represent all the votes actually cast for him, but that he is entitled to a large number that were not counted for him by the precinct managers, or, having been counted by the precinct managers, were unlawfully rejected by the county board of canvassers, and did not therefore enter into the final result as stated in the above table. And he further contends that a large number of ballots were counted for the contestee that were lawfully cast for him, and that polls were returned for him that have been rejected. He also contends that by violence and intimidation at various places in the district a large number of those who intended to vote for him were prevented from doing so, by reason of the fact that their names were not on the rolls; and that all the votes that were counted for the contestee should now be rejected. He also contends that the State board of canvassers made a statement that the contestee's name was not on the rolls, and that the statement upon which his credentials are based from the state-

ment of the county board of canvassers, and that this was the only legal data necessary, and the 24th section of the act of 1868 is relied upon as sustaining that position. Under the act of 1868 the precinct managers delivered the boxes containing the ballots and the poll-lists to the county board of canvassers within three days after the election, and this board counted them upon the following Tuesday and made up their statements, transmitting them by mail, one each to the governor, comptroller, and secretary of State.

In view of a contest before the House these provisions became the subject of severe animadversions, and in 1872 an act was passed providing that all elections shall be regulated and conducted according to the rules, *principles*, and *provisions* therein and "all conflicting" acts are repealed.

Now the principal provisions of this law are:

1st. That the ballots shall be counted by the precinct managers as soon as the polls are closed, and that the boxes containing the ballots shall be sent to the county board; and, 2d, that a statement of the county board of canvassers should be sent by a special messenger, with the returns, poll-lists, and all papers appertaining to the election, addressed to the governor and secretary of state. Under the law of 1868 the ballots were liable to be tampered with after the polls closed and during the interval before they were counted, and the county board of canvassers was wholly without check upon their statement.

The act of 1872 takes from the county board the counting of the votes and devolves that duty upon the precinct managers, and requires that it be done publicly at the closing of the polls. It also places a check upon the aggregated statement of the county board by requiring that the returns, poll-lists, and all papers appertaining to the election be sent by a special messenger, addressed to the governor and secretary of state. To use the terms of the act itself, the "principle" contained in this "provision" is a check upon the opportunity of the county board to perpetrate fraud, and all acts in any way conflicting with the rules, principles, and provisions are repealed. It is unquestionable that if the State board is to make up its statement of the vote of the district solely upon the statements of the county boards, aggregating the votes of each of the counties, there is no check whatever upon the statements of the county boards, and the "rules and principles" are defeated, and there is no purpose whatever in sending by a special messenger "the returns, poll-lists, and all papers appertaining to the election" to the governor and secretary of state. This provision is a part of a remedial statute, and is to be liberally construed, and all acts "in any way conflicting with its rules, principles, and provisions" are repealed. By no canon or rule of construction can this provision of the remedial amendatory act be thrown away.

But if the section 24 of the act of 1868 is not thereby repealed, the two acts must be construed *in pari materia*, and the State board of canvassers should make up their statement of the vote of the district from the certified copies of the statements made by the board of county canvassers, and from the precinct "returns, poll-lists, and all papers appertaining to the election."

These, then, become together the data upon which the State board of canvassers make up their statement whereon the certificate is based. If it is based upon anything else, or only upon a portion of the data prescribed by law, it is without legal validity as regards the election of a member of Congress; and this, wholly independently of the question as to whether this is done fraudulently, ignorantly, or is a mere *casus omissus*.

The party relying upon such a certificate must prove his vote *aliunde*. In this case there is a peculiar and most forcible illustration of the wisdom of this requirement that the precinct return and poll-list shall accompany the statement of the board of county canvassers, for this board has no judicial authority. This is admitted by counsel on both sides. Yet in two counties they have assumed to exercise judicial powers in throwing out entire boxes and in not counting the vote polled for Congressman at others, and without any pretense of cause. And in consequence of the failure of the county boards of these counties to send to the governor and secretary of state the precinct returns and poll-lists, as they are specifically required to do by law, the official data is wanting upon which to add the vote at these several boxes. In the three counties of Edgefield, Colleton, and Barnwell the legal data by which the frauds of county boards of canvassers is intended to be detected and corrected, and which forms an important part of the basis on which the member's certificate of election is based, has been deliberately withheld and suppressed. There is no official data by which to fix the vote at polls which have been fraudulently omitted from the count, in contravention of the plain letter of the statute, and the construction placed thereon for years past by the court of last resort in that State. And, on the other hand, there are polls which should be rejected from the count for gross illegalities and fraud in the management thereof, and others for violence and intimidation; but, in consequence of the illegal suppression of the data required by law, it is impossible to ascertain how these polls were counted in the statement as made up by the State board from the aggregate furnished by these three county boards.

The principle is correct and sound, and is well settled, that when the reliability of the official statement is destroyed, whether for fraud, for ignorant neglect of legal duty, or because made up from insufficient, illegal, or fraudulent data, it must be disregarded as evidence. But the vote of the electors is not lost because the pretended statement of it is defective, illegal, and unreliable, but it may be proven *aliunde*.

It is clearly established that the State board had not "the precinct returns, poll lists, and all other papers appertaining to the election" before it at the time it made up its statement on which the certificate of election was given to contestee; and it is equally well established that that board made up its statement merely from the aggregated statement of the county board, without any of the legal data with which to correct their errors or detect their frauds. It is strenuously claimed for the contestant that these returns, poll-lists, &c., were essential factors, and that the want of them destroyed the validity of the statement of the State board absolutely, whilst for the contestee it is urged that the law of 1868 remains unchanged as to the State board.

The committee has not deemed it necessary to decide this legal question, as there are other questions, both of law and fact, which enter into the case, and, as they think, control it.

The contestant, however, claims that if all three of these counties are not rejected for the reason above contended for by him, that still the county of Edgefield must be for another reason, viz, that by reason of violence, intimidation, and fraud practiced at the various precincts of this county the legal vote has not been and cannot be ascertained. On this proposition the committee has examined the record most carefully. Whilst your committee would be glad to know that this county stood alone in this respect, it is true that the spirit of violence and lawless-

ness was rife throughout five counties in this district, everywhere manifesting a fixed purpose to prevent the colored people from voting in the first place, and then to avoid a fair and honest count of the vote which had been polled. In the excesses to accomplish these ends the adherents of the contestee in this county knew no bounds. Beginning at the court-house, and extending to every portion of it, a purpose to disregard the law in order to defeat the rights of the majority was boldly carried out. At Edgefield Court-House the poll is proven to have been counted 763 for contestee and 11 for contestant. If we eliminate from the statements of the contestee's witnesses their opinions and other irrelevant matter, there is no conflict as to the material facts. The poll was held up-stairs in the court-room, and one of the double doors was securely closed, whilst the other, 18 inches wide, was kept by a Democratic guard, so that those Republicans who succeeded in running the gauntlet of the one hundred Democrats who thronged and crowded the staircase were held here and subjected to further insult and violence until they could struggle out, with their clothes cut, whilst the gallery or porch over the outside entrance was filled with Democrats armed with brickbats, and the Masonic Hall opposite was occupied by a military company, the Edgefield Rifles. To call this an election is a reflection on American institutions.

At Mount Willing the poll was held inside of a house, the entrance guarded by Democrats. "Republicans were kept back, Democrats admitted," until the Democrats had all voted, when a party of mounted Democrats rode up, and, opening fire, drove the Republicans from the poll. Two hundred voters were driven off, and the supervisor prevented from discharging his duty (p. 193).

At Meeting Street (p. 207) and Cheatham's Store (p. 204) the same course was adopted, and at both of them the supervisor was prevented from discharging his duty.

At George's Cross-Roads the Republicans were kept back by mounted Democrats crowding the polls, whilst at Pleasant Lane contestee's own witness admits that there were as many as fifty Republicans at the polls, but that only one Republican vote was counted. - At Red Hill and Richardsonville the supervisors were interfered with and prevented from discharging their duties, their commissions and papers taken from them, and they were driven away, whilst the voters were hindered by force from casting their ballots. At Landrum's Store the supervisor's poll-list was taken away from him and 76 fraudulent ballots stuffed into the box, whilst at Johnston's, after keeping the Republicans from the polls by crowding them until about two o'clock, the Democrats commenced a general disturbance, ran off the supervisor, and opened fire on the Republicans, in which a colored Republican was shot in the head and his dead body left on the ground. At this poll 800 voters were driven off. During the day squads of armed Democrats were kept riding from precinct to precinct, under the pretended apprehension that the Republicans were going to seize the polls, but their conduct and bearing leave no room for doubt that their sole purpose was to prevent the supervisors from acting and to awe and intimidate the voters and drive them away from the polls; and they were successful in their efforts to this end.

At Tolbert's Store the supervisor was not allowed in the room where the poll was held; armed bodies of Democrats crowded the polls, obstructed the electors, and 150 were prevented from voting.

At Red Hill the supervisor's commission and papers were taken from him and destroyed. With the boxes containing the ballots, and from all but one of them the poll-lists also, before them the county board refused

to count or include in the statement the vote of five precincts, to wit, Etheridge's Store, Perry's Cross-Roads, Coleman's Cros-Roads, Caughmen's Store, and Liberty Hill. In this they clearly transcended their powers under the law. The testimony most conclusively shows that in the county the whites were Democrats and the colored people were voting or trying to vote the Republican ticket. The testimony shows that 3,020 Republicans were at the polls in this county anxiously trying to vote and who were prevented by force from doing so. The contest was to keep the colored people from voting, for the nature of their vote was unquestionable. The census taken the year of this election shows whites over 21 years, 3,553; colored, 5,648. Yet it is claimed the contestee received 6,467 votes and the contestant only 1,046. Had every white voter in the county, therefore, actually voted for the contestee he could not have gotten this vote by 2,877, and the utter absurdity of the proposition that this or any considerable number of colored people voted for the contestee is fully established by the testimony; and this fact also illustrates the conclusiveness of the proofs which have induced your committee, after a thorough and careful consideration of the testimony, to conclude that there was no legal and valid election held in the county of Edgefield on the 2d of November, 1880. That the will of the electors was suppressed by violence and intimidation, and that the pretended count and canvass of the vote is involved in an inextricable confusion of fraud, and that the records which should establish the truth in regard to it have been illegally suppressed.

REFERENCES TO TESTIMONY IN EDGEFIELD CO.

As to Edgefield Court-House:

- Testimony of W. E. Lynch, p. 432.
- Testimony of A. J. Lee, pp. 433, 434.
- Testimony of Paris Simpkins, pp. 443, 459.
- Testimony of Norman Youngblood, pp. 453, 456.
- Testimony of L. Cain, p. 457 *et seq.*
- Testimony of Jesse Jones, p. 465.
- Testimony of M. O. Sheppard, pp. 498, 500.
- Testimony of D. R. Durisoe, pp. 528, 529.
- Testimony of Lewis Jones, pp. 517, 518, 519, 521.
- Testimony of G. W. Wise, p. 536.
- Testimony of Charles Holmes, p. 694.
- Testimony of Wiley Weaver, p. 690.
- Testimony of R. T. Anderson, p. 504.

Mount Willing:

- George Valentine, p. 417.
- David Graham, p. 438.

Meeting Street:

- N. T. Tillman, pp. 207, 430.

Cheatham's Store:

- Brister J. Yeldell, p. 428.
- Harry Oliphant, p. 451.
- John Brunson, p. 538.
- D. I. Mitchell, p. 701.

George's Cross-Roads:

- Westley Long, pp. 424, 425.

Red Hill:

- Anderson Carter, p. 442.

Richardsonville:

Richmond Morley, p. 435.

Pleasant Lane:

James P. Norris, p. 541.

Talbert's Store:

Lewis W. Collins, p. 441.

Landrum's Store:

Nathan Sullivan, p. 82.

Johnston's:

William Scott, p. 546.

Willis Vermillion, p. 85.

Butler Burt, p. 86.

John Hammond, p. 87.

EDGEFIELD C. H.

W. E. Lynch testifies (page 432) as follows:

Was one of the commissioners of election for Edgefield County.

Q. To what political party did the managers belong?—A. Mostly to Democrats.

Q. Were any Republicans appointed?—A. Not that I know of.

Q. Did or did not the board of commissioners, as far as possible, select Democrats for managers?—A. They did.

Q. Acting as a board of county canvassers, did the commissioners return all the returns or ballots from each and every precinct in the county?—A. They did not.

Q. How many and what polls were not canvassed?—A. They were five—Ethridge's Store, Perry's Cross-Roads, Coleman's Cross-Roads, Caughman's Store, Liberty Hill.

Q. Why were those polls not counted?—A. On account of irregularities.

Q. In what did those irregularities consist?—A. Managers failed to make a return or send any poll-list.

Q. Were these ballots counted by the board of county canvassers?—A. Not by the county board.

G. Do you know how many ballots these ballots or either of them contained?—A. No, sir.

Q. Did you see the boxes opened?—A. I did.

Q. What was the appearance of these boxes when opened?—A. Nothing in them but ballots; one was full, other partially filled.

Q. Under what law did the board act in rejecting these polls?—A. I don't know what law; but we were advised that we had nothing to go on.

Q. Who gave you this advice?—A. I don't remember now.

Q. Were they Democrats or Republicans?—A. Democrats.

Andrew J. Lee testifies (page 433) as follows:

Q. Did you hold any official position at the late election, and, if so, what?—A. I was one of the commissioners of election for Edgefield County.

Q. From what political party were the commissioners of election appointed?—A. The Democratic.

Q. Were any Republicans appointed?—A. None.

Q. At the canvassing of the votes by the commissioners, were any polls not canvassed?—A. No, sir; five were not counted; don't remember the polls.

Q. Why were they rejected?—A. Because they were not returned according to law.

Q. Was there any other reason assigned by either of the commissioners, or any other person in the presence of the board, why you should not count them?—A. None at all.

Q. When these boxes were opened (five) what was their appearance?—A. Some did not have their returns in them, and one had nothing but ballots in it; one was nearly full, the others about half full.

And on page 434 as follows:

Q. What ticket did you vote at the last election?—A. I did not vote.

Q. What ticket did you vote 1878?—A. I did not vote.

Q. What in 1876?—A. The Republican.

Q. Why did you not vote at the last election?—A. Because the generality of the Republicans did not vote, and I did not want to after they all left.

Q. Was not your Republicanism strong enough to cause you to vote that day?—A. Yes, sir, but I did not think it would do any good. I was invited to vote that evening.

Q. Why did the Republicans not vote?—A. The place was crowded that morning
Democrats.

Q. Could they get to the polls?—A. Could not get there till the Democrats got
way.

Q. Were there many Republicans present?—A. I thought about two thousand men
at morning.

Q. Did many of them go away without voting?—A. The greater number; nearly all.

Q. How many voted at Edgefield poll?—A. I don't remember but very few.

Q. Where was the poll held?—A. I don't know.

Q. Did you attempt to go into the poll?—A. No, sir.

Q. Were any men present in uniform or red shirts?—A. Yes, sir; some red shirts.

Q. Many?—A. About half the number of Democrats that were in the village had
red shirts.

Q. About how many Democrats?—A. Three or four hundred.

Paris Simpkins testifies (p. 443) as follows:

Question. Were you in the town of Edgefield on the night before the last election?—
Answer. I was.

Q. Did anything unusual occur during that night?—A. Something certainly very
unusual for this community. There were quite a number of armed men in the town
Edgefield, who paraded up and down the streets, all mounted, firing off their pistols,
filling in the most hideous manner. I was on the street myself, and desired to get
back to my home, but was afraid to go back on the front street, as I came, for fear
that I might be recognized and shot; not that I had done anything to be shot for, but
knowing that I was regarded a leader of the Republicans of the county. It was be-
cause of this position that I was apprehensive of danger.

Q. How long did this firing continue?—A. It continued almost incessantly for five
ten minutes.

Q. What was the object of it?—A. It occurred to me the object was to effectually
intimidate the Republicans of this community. At any rate, I would say that I was
very affected by it.

(Objected to.)

Q. Were these men in bodies or singly?—A. They generally moved in solid bodies.

Q. Did any one appear to be in command?—A. Yes, sir; they were evidently com-
manded by some one, because I could hear the orders given.

Q. About how large was this body?—A. I would judge that there were between
three and four hundred men.

Q. Was this before or after dark?—A. Just after dark.

Q. Could you distinguish them by their faces or clothing?—A. I could not by their
faces, but by the flashes of pistols could tell that some had on red shirts.

Q. Do you know if these men resided in the town of Edgefield?—A. They were all
strangers to me.

Q. Were you present at or near the poll in Edgefield Court-House on the day of
election?—A. I was.

Q. State what time you arrived at the poll, how long you remained, and all that
occurred there or in the vicinity that you saw or heard during the day.—A. I arrived
at the poll about 7 o'clock. I then understood that the box was up in the court-
house. The entrance to where box was was densely packed by Democrats, who kept
their positions, which rendered it utterly impossible for me or any other Republican
to go in and vote without precipitating a riot or row in trying to elbow his way
through the crowd. I heard such words as these: "Boys, hold your positions";
"Stand firm." I also saw some Democrats on the ground pitching rocks or brickbats
to the other Democrats who were upon the porch of the court-house. Of course
they caught them and held them. There appeared to be imaginary line drawn just
in front of the court-house down to the ground. There were Democrats who walked
up and down this line, and as the Republicans would come toward the court-house
they were told just here not to go any further. I noticed this matter with peculiar
interest. There appeared to be an officer in charge of line. The officer who I allude
to was dressed in a very peculiar suit of clothes. I have no recollection of ever seeing
such a suit before. As the Republicans came into town it seemed to cause quite a
commotion among the Democrats in and around the polling place. I saw quite a number of
Democrats rendezvousing in Masonic Hall; they carried their guns or rifles with them.
They did not go up in a body, but went two and three together. Several times dur-
ing the morning there seemed to be some excitement; then I could see some of these
men who were in the hall rush to the windows in a menacing attitude. I then left
the vicinity of the box, and I urged other Republicans to leave also, as I was sure
they could not have a fair expression at the ballot-box of their choice from what I
had seen. They did leave without voting.

On cross-examination as follows (p. 459):

Q. You said you knew, from the conduct of Republicans generally, and from the fact that you knew some of the leaders of clubs here on election day, that the 2,000 men were Republicans. Tell me the difference in conduct of Democrats and Republicans.—A. The only line of distinction that I can draw is that the Democrats usually wear the red shirt; and further, all the white men are usually mounted, and the most of them are generally armed and always in charge of the ballot-box, and they generally congregate together, while the Republicans are colored men, with but very few exceptions, and they usually stick together.

NORMAN YOUNGBLOOD testifies (p. 453) as follows:

Q. When were the most people about the polls?—A. About nine o'clock.

Q. How many people were there at this time?—A. From twenty-five to twenty-seven hundred, I judge; around the park and stores were covered with them, and in the park.

Q. What part of this crowd were Republicans and what part Democrats?—A. About twenty-five hundred Republicans and about one hundred and fifty Democrats.

Q. How were the Republicans dressed?—A. In ordinary clothes.

Q. And the Democrats?—A. About one-third in red shirts, and one in a calico suit, and the rest were in citizens' clothing.

Q. Did you see any arms about the poll? If so, who had them, and what were they?—A. Yes, sir; a double-barreled shot-gun on the court-house steps, a sixteen-shooter under the porch; I saw four pistols in men's hands, and the best quantity of Democrats had pistols on them; and I saw two more shot-guns on the street, and I saw two or three dozen Remington rifles.

Q. Who had these guns?—A. The people; the ones I take to be Democrats.

Q. Did the Republicans have arms?—A. Yes; I saw two pistols.

Q. Did you vote?—A. No, sir.

Q. Why not?—A. There was a line drawn across before the steps in front of the poll; crowd of Democrats were on the steps clogging them up, and a man with a calico suit on was in front of the steps, and whenever a colored man would try to vote he would tell them to stand back, you can't vote here; the white people pushed through the crowd and got to the polls.

Q. Were any persons assisting this man to keep the colored people away?—A. A good many white men were in front of him on the ground, who also would tell the colored people to stand back, you can't vote here yet.

And, redirect (p. 456):

Q. On your cross-examination you said, in answer to a question "Could you have voted in the afternoon?" that you could if you had a mind to go through men that you thought would not interfere with you. What do you mean by this?—A. I had been sure men like the citizens here in Edgefield village were up there, and all the men like them, I would have gone up and voted. As objection had been made to the Republicans to stand back, and seeing the angry people on the steps that I did not know, I would not go up there.

L. Cain testifies (p. 457) as follows:

Q. Could Republicans hold public meetings without fear or molestation in this county?

(Objected to as matter of opinion except as to himself.)

A. As to myself I was afraid to hold public meetings, and was told by prominent Republicans that they thought a mass-meeting would be treated by Democrats just as they were in 1876. It is well known that our meeting on 12th of August, 1876, was broken up by the Democrats, and that we held no other mass-meeting during that campaign save one, which was attended by a United States commissioner and United States marshals. When the last meeting was held there were six or seven companies of United States troops in the town.

Q. In what way the Republicans organized during the last campaign?—A. They were organized into Garfield and Arthur clubs. I had about 48 of these clubs in the county, ranging in number from 25 to 200 in each club. These clubs were all over the county, having been organized by precinct chairmen by my direction.

Q. Have you any means of knowing how many Republicans belonged to and acted with these clubs?—A. I have, as a list from each club was brought me by the precinct chairman.

Q. Did you attend any of these clubs?—A. Yes, sir; I did; I attended about five of them.

Q. From the party organization and your sources of information and your knowledge of the voters of Edgefield County, what result did you have reason to expect on the day of the election?

(Objected to.)

A. I had reason to expect a great Republican triumph, as a great many Democrats had told me previous to the election that every man would be allowed to vote, and that there would be a fair count; this was my belief before the appointment of managers by the commissioners of election, but when they met and appointed all Democrats, thereby giving Republicans no representation on the boards of managers, my opinion became somewhat changed.

Q. Was there anything in the numerical strength of the two parties which caused you to expect the Republicans to carry the county?—A. I had no means of knowing the numerical strength of the Democrat party, except what was furnished by the census of 1880; that census showed the colored men in Edgefield would be about 2,000 majority, and that colored men in Edgefield are Republican; and I am satisfied, if they had been allowed to vote untrammeled, would have been a larger Republican vote polled in Edgefield in 1880 than was polled in any previous election.

(Objected to as a matter of opinion.)

Q. Were you in the town of Edgefield on the night before the election?—A. I was.

Q. Did anything unusual happen that night; if so, what?—A. I came in town about one-half hour by sun; at that time, and until about 8 o'clock, white men, dressed in red shirts and mounted, came in from two or three directions; some had guns, some pistols; about dark quite a number of these men took possession of the court-house; soon after they went in I heard the firing of pistols and guns from the porch of the court-house; when this took place I thought it advisable for me to leave for home, and did so.

Q. Were you in town on the day of election?—A. I was.

Q. Were the voters allowed to cast their ballots freely and without molestation from any one; and if not, how and by whom were they prevented?—A. If a voter was known to be a Democrat he had no trouble whatever in getting to the polls, but up to 21 minutes after 8 o'clock not a Republican vote had been polled. Why I am so precise about the time, I met General Butler near the court-house steps and complained to him about Republicans being kept from voting; he said it was early yet, I suppose every man will get to vote. I told him the Democratic party had been voting all the morning. I then pulled out my watch and showed him what time it was; he looked at his watch and he too was 21 minutes past 8.

Q. Did you see any arms anywhere near the polls that day?—A. Yes; I saw quite a number of pistols in the hands of red-shirters while the voting was going on, and from the porch and windows of the Masonic Hall, the piazza of the printing office, from the store door now occupied by the joint-stock company, and on the streets, were quite a number of white men with guns and pistols in their hands; most of these men had on red shirts.

Q. Do you know of any persons who did not or could not vote that day; if so, how were they prevented?—A. Quite a number of Republicans, myself among them, went near the court-house in order to get to vote; when within about five or six yards of the court-house steps I was shown a line that had been drawn; the red shirters were on the court-house side of the line, and quite a number of colored were on the other side. I walked to the line to see if they would allow me to cross, and was told by a red-shirter, who appeared to be a sentinel, to stand back. I went back about twenty-five or thirty yards, and remained there for two hours, I guess, watching the progress of the election. During this period about six or eight colored men went up, three at a time; seeing they staid up there so long, I timed three of them; they staid 20 minutes by the watch. About 12 o'clock a row took place between a white and colored man, and believing that I could not vote there with safety, and seeing, too, that one of the colored men who had been up had his coat cut all to pieces with knives, I left there and returned no more during the day; I did not vote.

Q. How many Republicans were at the polls at any time while you were there?—A. Well, sir, I approximate them at 2,000.

(Objected to.)

Jease Jones, United States supervisor for Edgefield Court-House, gives the following account of the election at that precinct (see p. 465):

Q. Where was the box placed?—A. Upstairs, in the court-room, within the railing, about fifteen feet from door; there is a passage-way, about four feet long, from the porch door to the court-room door.

Q. How wide is the porch?—A. About four or five feet wide.

Q. When the poll opened how many people, and to what parties did they belong, who were inside the polling places, other than the managers, clerk, and supervisors?—A. When the poll opened there were no others inside the rail; about twenty or twenty-five inside the room—all Democrats.

Q. At what time did you arrive at the poll?—A. About half past four in the morning.

Q. Were any persons in the court-house then, on that floor?—A. Yes, sir.

Q. Do you know how many, and who they were?—A. I suppose about one hundred; all Democrats.

Q. When the poll opened, were there any persons in the room where the box was, in uniform of any kind, or with arms of any description?—A. There was, Democrats with red shirts; I suppose about ten or fifteen in number with arms; about forty or fifty with red shirts on; some double-barrel shot-guns, some pistols.

Q. Were any persons within the rail with uniforms on after poll opened?—A. No, sir.

Q. Were any persons within the rail who had arms?—A. There were arms inside the rail, in the prisoners' dock, about *one foot* from the ballot-box.

Q. What kind were they, and to whom did they belong?—A. There were three double-barrel shot-guns; I cannot say to whom they belonged.

Q. How long did these guns remain there?—A. About two or three hours.

Q. Who removed them?—A. I saw *some gentlemen* come in and take them out.

Q. Do you know who caused their removal?—A. It was caused by some man on the streets raising a row by drawing a pistol; and they were taken out by parties who were in the room.

Q. Were the parties who took them out election officers?—A. Yes, sir.

Q. What officers were they?—A. *Democratic supervisors.*

Q. Do you know if either of these guns belonged to, or was in custody of, either of the managers or the clerk?—A. I can't say.

Q. How many doors between the porch and ballot-box?—A. Two doors.

Q. Were these doors kept open all day?—A. Outside door was a double door, each of which was about *one and a half* feet wide; only side of door was open, the other was shut; the inside door was open; the inside one was a gate to a railing.

Q. Did you keep a poll-list?—A. No, sir.

Q. Why not?—A. I did not think it would be safe for me to do.

Q. Why did you think it unsafe?—A. Because, if they had seen me keeping a poll-list I would not have been allowed to stay there (objected to it as matter of opinion), as I was told by Democrats if I attempted to make a report I would not be allowed to act as supervisor.

(Objected to.)

Q. Can you say how many voters voted that day?—A. About seven hundred and sixty-three or seven hundred and sixty-nine.

Q. How many colored men voted?—A. About fifteen.

Q. How many Republican votes counted by the managers?—A. Eleven.

On page 466:

Q. Did all the voters have free access to the polls?—A. Did not, because one side the front door was barred, and the Democrats stood on the porch with pistols and said that no damn negroes should vote there.

Q. How long did this continue?—A. It continued till 4 o'clock in the afternoon.

Q. Did this in any way prevent any voters from approaching the ballot-box and voting?—A. It did, Republicans.

Q. How, then, did the eleven Republican votes get into the box?—A. They came up to the door, which was barred across with two bars, and the managers said let in one colored man and one white. They would let in one colored man and three white, until that number fifteen was exhausted. No more colored men would or could come in.

Q. What time did they commence letting the colored men in in this way?—A. About 9 o'clock.

Q. Had any persons voted before this?—A. Yes, sir.

Q. About how many?—A. About thirty-five or forty whites.

Q. Why did the voting proceed so slowly?—A. I can't tell why.

Q. Were there many Republicans around the poll attempting to get in to the poll?—A. Yes, sir; a great many.

Q. About how many?—A. Suppose about 2,000.

Q. From the action of the men on the steps and porch within the court-room, and the officers of election, could these men have deposited their ballots had they seen fit to do so?—A. Could not.

Q. Was it peaceable and quiet all day at the poll, and did you see any evidence of violence?—A. It was not; I saw pistols drawn by Democrats on Republicans, and I saw Democrats picking up large brickbats and saying, "If you damn negroes attempt to come up to vote you will catch these" (referring to the brick they had in their hands).

Q. Do you know of any ballots being cast on that day by persons who were minors, non-residents of the county, or by persons who had already voted once?—A. I know of no minors; I do know of non-residents voting, and I know of parties voting more than once.

Q. How do you know they were non-residents?—A. I know them well, and know where one lives in Georgia. I know of a great many who voted more than once; they would come up and voted, and would sit around the room and would then come up and vote again.

Q. Did any vote more than twice?—A. Yes.

Q. More than three times?—A. Yes, sir.

Q. More than four times?—A. Yes, sir.

Q. More than five times?—A. Yes, sir.

Q. More than six times?—A. Yes, sir.

Q. More than seven times?—A. Yes, sir.

Q. More than eight times?—A. Not more than eight times.

Q. Did these persons vote under their own names each time?—A. No, sir.

Q. Was anything said by them or the managers when they came up to vote after the first time?—A. Not by them, but by the managers. They laughed and said they were tricks.

Q. Did the repeaters say anything themselves?—A. No, sir; they would simply come up and vote in other men's names and step aside.

Q. Did you know any of these men?—A. Yes; some of them.

Mr. O. Sheppard, a witness for the contestee, a private citizen who had ordered a colored elector arrested, as he himself testifies (498)—“I told him to put him in jail on account of his threatening manner and illdozing style”—further testifies on page 500:

In the first place, I had no right to issue an order; I was only anxious, as a public citizen, to see that peace should be preserved; and besides, we wanted nothing but peace, and Mr. Blackwell, being a State constable, and I drawing the only inference that was possible under the circumstances, that he and his crowd came here for a row, took that method of putting a stop to it, if possible, in order to preserve the peace. In my judgment, had it not been for that, his conduct would have precipitated a serious riot, in which numbers of lives would inevitably have been lost. These colored men who came to me and asked me not to have him arrested did not seem to be actuated by the same malice that he was, but I believe that they saw that we were prepared for them, and had it not been for that they would have been just as keen as he was. This is my opinion. I did not see those parties do any acts of violence, but they were in the same crowd with him; he seemed to be a leader; he was in front of the crowd, and had an outrageous, an awful large club, and seemed to be actuated by the most venom.

D. R. Durisoe, Democratic county chairman, who seems to have been in command of the red-shirt forces of Edgefield, testifies (pp. 528, 529:)

Q. Did not the fact of the Republicans approaching the polls yelling and waving their clubs tend to intimidate a good many Democratic voters?—A. We were all more or less apprehensive of trouble and danger, and forthwith I consulted with a number of gentlemen as to the propriety of sending for reinforcements, thinking that by increasing our numbers we could the better preserve the peace and keep down any difficulty between the parties. I then, immediately after this conference, sent messengers to Landrum's Store, Trenton, Johnston, and Cheatham's Store, for detachments from their Democratic clubs to come to our prompt assistance. Before sending these messengers I met on the street, near the court-house steps, and after the Republicans marched up and took their position, Capt. St. Julian Bland, and asked him to call his company together, and assemble at his armory forthwith, as I was fearful we were going to have trouble. He said he would do so, and started with a crowd in that direction.

Q. You said you requested Captain Bland to take his company up in the Masonic Hall (the armory); was not this company one of the militia companies of the State, and did you not make that request after you saw that a riot was imminent, and was it not done solely as a cautionary measure, that is, to prevent a riot, if possible, and if the riot could not be averted, then they were to be used as a means to prevent this large body of the infuriated negroes from committing any acts of vandalism?—A. I know that St. Julian Bland was captain of the Edgefield Rifles, and that the company was legally and lawfully commissioned and received into the State militia; and I further knew that it was his duty, when called upon, to aid in keeping the peace and assist in putting down and quelling riots should any occur; and I therefore thought that by having him and his company in readiness at the company's armory, to be called for if wanted, that said company's presence and influence would have material effect in bringing to a speedy end any riotous proceedings that might be inaugurated, and which looked so very probable at the time I requested him to assemble his company.

Q. Did you vote at the last election?—A. I did.

Q. For whom did you vote?—A. G. D. Tillman.

Dr. G. W. Wise, witness for contestee (p. 536):

Cross-examination by L. CAIN, counsel for contestant:

Q. About what time in the day was it when you received information that the Democrats at the court-house were apprehensive of danger?—A. About 9 o'clock; I think we got word twice.

Q. About how many men came with you in that company?—A. I think about fifteen started from Trenton, and some few fell in with us along the road, and there was not exceeding twenty-five when we arrived at the Edgefield precinct. This was not an organized company. *The most of our men had gone to Johnston.* We got a dispatch that there was some trouble down there.

Q. Were not most of these men who came with you armed with guns and pistols, dressed in red shirts, and when they were coming up Main street were they not yelling, flourishing their pistols, and making a display which was calculated to terrorize and intimidate Republican voters?—A. There was not a gun in the crowd. If there was any pistols I did not see them; *likely* they had pistols on. They certainly ought to have them, if they had not. *I had mine on.* I heard that there was a riot here, and came prepared to quell it, if possible. There were very few red shirts. Don't think a single man who left Trenton with me had on a red shirt; some few fell in, I think, had on red shirts. One man wanted to bring a gun, and I advised him not to do so, and he did not. No flourishing of pistols that I saw. I heard some hallooing or yelling. I don't know how easy Republican voters were intimidated. I don't think a little crowd like that would have intimidated me much.

Q. How many precincts did these twenty-five men who accompanied you visit that day besides Edgefield, Trenton, and Landrum's Store?—A. None that I know of, and not all of the same men who came here went to Landrum's Store, but others, who did not come to Edgefield, went to Landrum's.

Lewis Jones, a witness for the contestee (p. 517), who was a State constable, and when, as the testimony shows, there were between 2,000 and 2,500 Republican voters and less than 700 Democratic, testified as follows:

I approached the crowd, asked them what they wanted. They replied that they wanted to vote. I told them they would be allowed to vote three at the time; that they could not approach the polls in a mass that way; that if they would vote alternately, three at the time, three colored and three white, they would be allowed to vote; I would go with them myself and see that they were allowed to vote.

This witness testifies, on same page, “I got the appointment of State constable to act on that day for the purpose of keeping the peace and good order.”

And a cross-examination (p. 521):

Q. You offered to accompany them to the polls and see that they were allowed to vote; did you go with any of them?—A. I did; I went to the door where there was a guard whose duty it was to see that 3 be allowed to come in at the time; I went there with 3 squads, they became impatient, and said that it was too slow voting that way.

The testimony of Jones, Wise, and of D. R. Durisoe shows that bodies of armed Democrats in uniform were riding to and fro between the polls on the day of election. On pp. 518 and 519 he testifies:

Q. Were you in the village on the evening previous to the election?—A. I think I was, but am not certain.

Q. Do you remember seeing white men mounted, dressed in red shirts, and riding into town in companies that evening?—A. I do remember seeing squads of men riding into town and out again that evening; some few had on red shirts.

Q. Were not some of these men armed, and was not the demonstration made by them in the way of yelling calculated to intimidate Republican voters?—A. As to the arms, I can't say that I saw any; but as to the yelling, there was some hallooing; can't say that the demonstration was calculated to intimidate any Republican voter; I think they have got used to that sort of a thing.

Q. Is it not a fact that a great many white men rode into town that day in companies armed with guns and pistols?—A. There were squads of white men who would pass through town and stop a little; I think I saw some pistols on some of them; *no* guns.

Q. Do you not remember seeing Democrats at the village precinct that day who came from the Dark Corner, a distance of 25 miles; from the Saluda section, a distance of 25 miles; from Ridge Springs, a distance of 17 miles, or from Shaw's Mills, a distance of 18 miles?—A. I think there were men here from most of those places, but don't remember who; I don't remember seeing anybody here from Shaw's Mills.

Q. Do you remember seeing on the day of election white men dressed in red shirts on the street, armed with guns or pistols, or in the Masonic Hall, or in any of the doors or windows fronting on the public square?—A. There was some few men on the streets that day dressed in red shirts, and some of them may have had pistols; I don't remember about that; don't think any of them had guns. As that large crowd of colored men were approaching the public square, I myself ordered a remnant of the rifle company to rendezvous in Masonic Hall, and to take position in the windows fronting on the public square; they had rifles. There were other men armed with guns, but few in number, who took position in the gallery occupied by Mr. Miners; this was done with the purpose of suppressing a riot, for it looked very much like a riot; it was a preventive measure, I regarded it, and I think it had that effect.

Q. Did you order out the men that took possession of Miner's gallery?—A. I did; I think they went there on their own accord.

Q. Can you state where these men got their guns from that took position in the gallery?—A. No, sir; I don't know.

Q. Among those who assembled themselves in Masonic Hall under your orders, were there not persons other than members of the rifle company?—A. I don't know; don't know how many nor who they were up there.

Charles Holmes (p. 694) testifies:

Q. M. O. Sheppard has testified that the election at the court-house precinct was conducted fairly, and all could have voted who desired to do so, and that he carried a to polls himself: is that true or not?—A. It is not true. I was carried there by Lewis Jones, sr., and I could not have voted had it not been for him and others, thought I was going to vote a Democratic ticket. How come them to let me in?—(Objected to as not relevant—the latter part of answer.)

Q. Did you not see the entrance to the polling precinct obstructed during the entire part of the day that you remained at the polls, by Democrats uniformed in red shirts, sticks buckled around them, and, at times, with pistols in their hands; and also, did you not see them have brickbats, and some with clubs or pieces of boards in their hands?

(Objected to as cumulative evidence, and as new matter, and not in reply.)
A. I saw pistols in their hands; I saw them with brickbats, sticks of some kind—don't say what they were. The polling place was crowded with Democrats all day long.

Q. Do you know why the Republicans came to the polls in bodies?—A. I do. Because the recent election before, where there was one or two together they were run over and knocked their hats off; and I heard them say when there was a big crowd together may be they would not be attacked so.

(A part of the answer objected to as not relevant.)

Q. Can you explain why it was that a number of them had sticks in their hands?—I heard them say the Democrats was all armed and they were not able to buy them and had sticks to protect themselves to keep from being run over.

(Objected to as hearsay evidence.)

Q. You were president of a Garfield club, were you not?—A. I was.

Wiley Weaver (p. 690) testifies:

A. The object of our crowd was that the Democratic party had promised to be at cross-roads to turn us back: we thought that by coming in bodies that it would prohibit them from interrupting us; we taken the sticks, for instance, if they should undertake to run over us we would have something to protect ourselves, and it was not the object to take forcible possession of the polls.

(The latter part of the answer objected to as a matter of opinion.)

Q. You were the leader of the crowd that came along with you, were you not?—A. was.

Q. About how many were with you?

(Objected to as not in reply.)

A. About 150.

Q. Of this number about how many voted?—A. Not one.

Q. Then the statement made by some Democrats that every one could have voted who desired to do so is not true, is it?—A. It is not.

Q. State why you, and the men accompanying you, did not vote.—A. They didn't allow us any chance to vote.

Q. Why did you and your crowd leave the polling precinct at the time you did? (Objected to as not being in reply.)

A. It was about 2 o'clock when we left, and I saw there was no chance of voting and I taken my crowd and left.

Q. While at or near the polling precinct did you see any acts of violence on the part of the Democrats?

(Objected to as new matter.)

A. I saw the Democrats come around cursing, tempting us with board or pieces of plank while we were here; I mean drawing planks on us, and telling us what they would do, and that they would knock us down with these boards if we came up there.

(Answer objected to as new matter.)

Q. Some Democrats have testified that no violence or threats were used by the Democrats at the court-house box; then, from your knowledge, you know this to be untrue, do you not?—A. I do.

Q. Did the colored men who came with you have the slightest idea or intention of raising a disturbance with the Democrats at the polls on the day of election?—A. They did not.

(Objected to as matter of opinion.)

R. T. Anderson, another witness for the contestee, testified as follows on the cross-examination, on page 504:

Q. Will you explain how it was possible to preserve the peace by the assembling of these armed men up stairs in the Masonic Hall?—A. As was explained to me by some of those parties that was in the hall, they knew full well the Republicans could not stand the sight of fire-arms, and that the Republicans had such an overwhelming majority, and but few white, they assembled there, thinking that the sight of those guns would deter them from making an attack, or getting up a riot. If such thing should happen, they could use their arms effectually, and I have heard from several Republicans that the sight of those men in the hall were the only reason that a row was not gotten up here that day. I don't know their names. I have heard from at least twenty Republicans, while in my bar, say, if it had not been for them guns in the hall we would have taken that box that day.

PLEASANT LANE—EDGEFIELD.

James P. Norris, witness for CONTESTEE, testifies (p. 541) on cross-examination, as follows:

Q. There was no attempt on the part of the Republicans whom you saw passing the precinct of which you were a manager to interfere with the managers or the voting, was there?—A. None at my box. It seemed to me that they intended to congregate at Meeting street.

Q. Do you know anything about what transpired at Meeting street, except what you have heard from other parties?—A. I know that some of these colored men told me that they had been to Meeting street.

Q. Can you give the name of any of the parties who gave you this information?—A. I can, but I decline to do so.

Q. You stated in your direct examination that you heard the rumor that colored men were buying up all the arms and ammunition they could get some days previous to the election. Can you give the name of a single individual who made these purchases, or the name of a single individual who sold arms or ammunition to Republican voters just previous to the election?—A. It only came to me as a rumor.

Q. You have stated that so far as your observation extended it had been the custom of the Republicans, during the Republican administration, to mass their voters at a few precincts and take and hold possession of the same during the day; will you please state the election and precinct where white Democrats could not or did not vote, if they so desired, during the Republican administration?—A. I will state that in 1872, at Pleasant Lane, it was difficult for a Democrat to vote without wedging his way through a crowd of colored voters, and rendering himself liable to insult, and saw a white man get himself into a difficulty with a colored voter on that account.

Q. Will you please state whether the man you refer to or any other white man had to leave there that day without voting if he so desired?—A. No; he did not.

Q. Was not one of the managers at the election you refer to a Democrat?—A. I don't recollect.

Q. About how many Republicans were there that day?—A. Probably fifty during the day.

Q. Was there only one Republican vote polled there that day?—A. Only one.

Q. You stated that two or three colored men voted the Democratic ticket that day; can you give the names of these parties?—A. I can, but decline to do so.

MOUNT WILLING—EDGEFIELD.

George Valentine testifies as follows (p. 417):

- Q. Where was the poll held?—A. In a small office on the ground floor.
 Q. Where was the box placed?—A. On the table, about the middle of the room.
 Q. How large a room?—A. About twelve feet long, eight or nine feet wide.
 Q. Did the managers tell how long the polls had been open, or how many people had voted?—A. No, sir.
 Q. Did you keep a poll-list?—A. No, sir.
 Q. Were the voters allowed to come into the poll and pass out freely?—A. No, sir.
 Q. How was the entrance to the room arranged?—A. One door.
 Q. Was that door free?—A. The red shirts were standing around, with clubs and pistols, keeping the crowd back, and letting them in six at a time.
 Q. Was any discrimination made between the voters in admitting them?—A. Republicans were kept back and the Democrats admitted.
 Q. Were any Democrats kept back?—A. Every now and then, if a crowd of Democrats tried to get in, and if the house was full, they would keep them back (p. 20).
 Q. Were there many persons inside the house during the day?—A. Yes, sir.
 Q. To what political party did these persons belong?—A. To the Democratic party.
 Q. Were any Republicans there?—A. None but myself, except when they came in to vote.
 Q. Did any attempt to remain after voting?—A. No, sir.
 Q. Were the managers Republicans or Democrats?—A. Democrats.
 Q. Did you remain all day?—A. No, sir.
 Q. Why not?—A. A row took place, and I got out.
 Q. What time was this?—A. About 2 or 3 o'clock.
 Q. What caused the row?—A. A crowd of Democrats came up; commenced beating the colored people with clubs and sticks, and one pistol was fired; after that a great deal of shooting; then the colored people ran home.
 Q. Did all the colored people run away?—A. There was about a dozen staid around there till sundown.
 Q. How many went away at the time you did?—A. About one hundred and eighty or ninety.
 Q. Why did you not remain?—A. Because I was afraid they were going to kill me.
 Q. Did you go away before or after the firing?—A. I went at the time of the firing.

David Graham (page 438) testifies as follows:

- Q. Did you vote?—A. No, sir.
 Q. Why not?—A. The poll—when I got there I staid there till about 2 o'clock. About that time came up a crowd of Democrats and told us to leave, and we got away, and I went home.
 Q. Were these Democrats mounted on horses?—A. They were.
 Q. How were they dressed?—A. Some had on citizens' clothes, some red shirts.
 Q. What did they say to you?—A. They said, "You damn niggers get away from here."
 Q. You say that the firing commenced?—A. Yes; about a minute after this was said.
 Q. Were many shots fired?—A. Good many.
 Q. Did any others leave who had not voted?—A. Yes; they all left, Republicans.
 Q. Did anybody remain at the poll?—A. When I left all the colored had gone, except two or three, and a good many Democrats.
 Q. How many Republicans left before you did?—A. About seventy-five.
 Q. Had all of these voted?—A. No, sir.

Cross-examined by Mr. WARDLAW:

- Q. You say a good many Republicans left; had not some of them voted?—A. Yes, sir.
 Q. Do you mean to say that 75 left who had not voted, or 75 not voted?—A. I think 25 had voted; 50 had not.
 Q. Did you go back to the polls after you left?—A. No, sir.
 Q. Did you attempt to vote?—A. Yes, sir; I did a time or two, but did not vote; they were crowded so I could not get in.

MEETING STREET—EDGEFIELD.

W. T. Tillman testifies (p. 430) as follows:

- Q. In what capacity (were you there)?—A. I was a United States SUPERVISOR.
 Q. Were you present when the poll opened?—A. I was.

Q. What hour did it open ?—A. About six o'clock.
 Q. Did you see the box opened ?—A. No, sir.
 Q. Did you act as supervisor ?—A. No, sir.
 Q. Why not ?—A. I was prevented by the Democratic party, who struck me with a stick and asked me what was my business there. I told them I was a United States supervisor. One said, "What does the United States know about you ?" "God damn you ; you will smell hell here before night." While waiting for to open a Democrat snatched my hat off and hung it up. I put it on ; he snatched it off again, saying, "I hung it up ; let it stay or the first thing you know you will be hanging there." He went out of the room and returned with a club, evidently a piece of fence rail, and struck me twice with it, and I retreated up the stairway, and he then struck me over the head. The clerk of the board asked me to come outside with him. I did so, and while there the poll opened. A Democrat snatched my paper away from me, and I saw them no more.

(P. 207 :)

Q. Did you know of any Republicans going to that poll who did not vote ?—A. When my papers were taken away I was struck three times over the head, and advised afterwards by friendly Democrats to leave, I did so ; I returned twice, receiving abuse from this same man. I left the poll ; about one mile away met one hundred and seventy-five or one hundred and eighty Republicans ; I told them of my treatment ; we went to the poll and found it surrounded by red-shirts, Republicans, finding that the Republican supervisor was not permitted to act and not vote and left the poll.

Q. How many Democrats were around the poll at that time ?—A. About forty-five.

Q. About how many Republicans ?—A. None.
 Q. Any Democrats in red shirts ?—A. Yes.
 Q. Many of them ?—A. All except three or four.
 Q. Did any of them have arms ?—A. Yes ; about twenty-five or thirty had

GEORGE'S CROSS-ROADS—EDGEFIELD.

Westley Long testifies (p. 424) as follows :

Q. Do you know any man who went there to vote and did not vote ?—A. Yes.
 Q. How many ?—A. Some fifteen or twenty.

Q. Why did they not vote ?—A. The red-shirts or Democrats crowded the door so that they could not vote.

Q. What did they do ?—A. They got across the door and would not let the Republicans go in.

Q. How did they prevent them ?—A. They crowded the door with their horses and would not let the Republicans go in.

Q. Was there any violence or threats by any one that day ; if so, who made them ?—A. Democrats threatened to strike the Republicans, and said they should not stay long enough to vote.

Q. How long did this continue ?—A. I don't know. I did not stay long after the threats were made.

Q. Did the Republicans remain at the polls ?—A. I could not tell ; I left soon after the threats were made.

Q. How do you know these men did not vote ?—A. I went there with them and they went away with them.

Q. Why did they leave the polls ?—A. It looked as if the Democrats were going to knock down the Republicans, and we got away for fear it might come upon us.

And on cross-examination as follows, p. 425 :

Q. Did you hear any one tell the Republican supervisor that he should not let any Republicans vote ?—A. Yes, sir.

Q. Who did you hear tell him so ?—A. One of the managers told him so.

Q. Do you know who the manager was ?—A. I don't know his name.

Q. How do you know he was a manager ?—A. He was there, and said he was a manager.

Q. How near to the poll when you heard this remark of the manager ?—A. About twenty yards.

Q. Did he say it in a loud tone ?—A. He said it in an ordinary tone.

Q. Where was the manager ?—A. About twenty yards from the poll.

Q. What was he doing about twenty yards from the polls ?—A. The supervisor asked him to step out ; he wanted to talk with him.

u say the Democrats threatened to strike Republicans if they did not get away
re; what threats did they make?—A. They told them if they did not get away
re they would *frail them out*.

* * * * *

u said the Democrats had a good many pistols; how many did you see?—A.
-five or thirty, I reckon.

d you see any Republicans with pistols or clubs?—A. I saw some old men with
; canes.

u never saw any young men with sticks?—A. No, sir.

o you know who the men were that you saw with the pistols?—A. No, sir, I
nothing about them.

d those men live in your section?—A. I do not know; I never saw them be-

u said the Republicans could not vote there without fear. How do you know
A. Because the Democrats were presenting pistols at us.

u said the Democrats voted without fear. How do you know that?—A. There
preventing them from voting.

u said the Democrats said they intended to carry the election; did you hear
A. Yes, sir.

ho did you hear say so?—A. I prefer not to give names.

CHEATHAM'S STORE—EDGEFIELD.

ster J. Yeldell testified (p. 428) as follows:

what capacity (were you there)?—A. A United States Supervisor.

ere you present when the polls opened?—A. I was.

d you act as supervisor that day?—A. No, sir.

d you see the box opened by the managers before the voting commenced?—A.
it.

hy not?—A. Democrats were fighting a sham battle on the porch and I was
o go to the box.

d you go into the poll at all?—A. I did not.

eing supervisor, why did you not?—A. One of the managers objected to my
n.

d you stay at the poll all day?—A. I did not.

d you see the votes counted?—A. I did not.

ow many people were at the polls when it opened?—A. About one hundred
icans and about twenty-five or thirty Democrats.

d the polls open at 6 o'clock?—A. Did not.

hat time did they open?—A. About quarter after seven.

ow long after sunrise?—A. About one and a quarter hours after sunrise.

as there any one present wearing uniforms?—A. Yes, sir.

o what political party did they belong?—A. To the Democratic party.

d any of these men have any arms?—A. Yes, sir.

about how many?—A. About twenty.

ho were the parties that were having the sham fight on the piazza; those
d shirts on or without?—A. Those with red shirts on and those without.

o this fight were any arms used; if so, how, and what?—A. They had pistols
bs and brandished them at each other, striking on a box and making great

hy did you leave the polls?—A. A Democrat demanded my commission, and I
l it to him and he returned it, saying he'd be *damned* if I should supervise there
y.

try Oliphant testifies (p. 451) as follows:

ere you at Cheatham's Store precinct on the day of the last election?—A. I was.
id you vote?—A. No, sir.

hy not?—A. I was runned away by the Democrats; they fired at me.

ow many shots were fired at you?—A. Three.

d you see the parties who fired at you?—A. I did not.

hat time of the day was this?—A. Between 12 and 1 o'clock.

hat ticket did you intend to vote?—A. Republican.

I on cross-examination as follows:

not fired at you without you doing anything at all?—A. Yes, sir.

hat did he fire at you with?—A. Pistol, as far as I know.

d you see him when he fired at you?—A. Yes, sir.

hen could you not have seen what he fired at you with?—A. I could if I had
ed on nothing but it.

Q. Is it not usual when a man is fired at, and he looking at the person who fires, to have his mind on it?

(Objected to as irrelevant by contestant; seeking opinions, not facts.)

A. I having my mind on running to save my life did not see what he fired at me with.

Q. Did you not say you were looking at him when he fired at you?—A. I did not say so.

Q. Then, as you did not see the shots fired how do you know they were fired at you?—A. Because there was but that one man after me in an open old field.

John Brunson, witness for *contestee*, testifies (p. 538) as follows:

Q. Did you see any acts of violence committed there that day?—A. None at all.

Q. Harry Oliphant testifies to having been fired at about four or five hundred from the polls; if he was fired at at all, it was not in the vicinity of the polls?—A. If he was fired at all, it was some three or four hundred yards from the polls; perhaps further. I heard pistol shots, one or two, and heard afterwards that they were fired at Harry Oliphant.

Q. Was not that difficulty a personal one, and had nothing to do with the election?—A. I don't know.

Q. Was it not a general rumor that the colored people were buying up all the arm and ammunition they could get just prior to the election?—A. I never heard it.

D. J. Mitchell, p. 701:

Q. Were you at Cheatham's Store precinct on the day of the last general election?—A. I was.

Q. Mr. John Brunson has stated that the election was conducted fairly there; is that correct or not?—A. I can only say that the Republicans were not allowed to vote whilst I was there.

Q. Were you violently treated by Democrats there that day? And, if so, state the manner in which you were used.

(Objected to as new matter and not in reply.)

A. I was; I was beat; they attempted or threatened to kill me. I was about one hundred yards, more or less, from the place of voting; I had just left the store and had gone down the road; the supervisor and about three or four hundred Republicans who had just left the store, after being denied the right to vote. The supervisor had commenced taking the names, and I told him that I was going home, and he said to me not to go until he could get the names of all the Republicans who would come there to vote. He then concluded that he would go back to the voting place again, and so he did, after taking all the names, all of them that was present. He then asked me to go with him back again and stay with him all day, in order he could take the names of them that was objected to voting. I did not go with him there. We was not far from the store, and after all had left that place I started to go where the supervisor was, and before I got to the store, or got in sight of the store, I stopped and looked to see if I could see the supervisor or any Republicans there. I did not see him nor a colored person there. I started away, and I heard some one saying, "Halt." I did not stop at first, and they still repeated the same word. I was riding, and I did not stop at all, but I walked along slowly, and they overtook me and told me that I had to go back to the store. I told them I did not have any business down there now, and I was going home; they were white Democrats; struck me with a club, and caught hold of the horse's bridle-rein, and told me that I had to go back. He began pulling the rein, and I got off the horse. At this time there was another Democrat standing behind me; I turned my face to him, and he had his pistol drawn on me, and told me if I did not go back to the poll he would shoot my brains out and leave them in the road. I then concluded, rather than be killed, to go back; I gets to the store, then I stops at the stops and refuse to go any further. He told me to go on, and I would not move; they then commenced pushing me, and caught hold of me by the arm, and carried me to the window, and put one hand on my head and the other on the box, and he said, "Here it is, God d——n you, now vote." I told him I could not vote when I wanted to, and I did not intend to vote at all. One of the Democrats struck me with a club, and then I spoke and told them I had done nothing for them to treat me in that manner, for the piazza was full of Democrats. They jumped on me, and commenced pulling me and beating me about, so I commenced trying to get loose; they commenced trilling me on every side, and I seed that I would be killed; I tried to get to the door. In the mean time they still had hold of me, pulling and knocking of me, trying to pull me out of the piazza; they said to kill me. One of the supervisors came to the door and opened it, and as soon as I could I got in the store, whilst they all was knocking and pulling of me. They tried to break in the store to get to me, but was objected by the locking of the door by some one that was in the store. They were still yet cursing and damning, and saying "Make him vote"; and I voted a Democratic ticket, thinking it would be the means to save my life; and after I had voted I was

t out the store by a white Democrat out of a window at the back end, which way'd through Mr. Cheatham's premises. My going out the back the supervisor, or other Democratic manager, said it would save my life, and one of them went a little ice with me, and told me to get off as quick as I could, or else I would be killed. (Objected to as being new matter which the contestant knows that the contestee will not have an opportunity of replying to, and not in reply.)

TALBERT'S STORE—EDGEFIELD.

Lewis W. Collins (p. 441) testifies as follows:

- Q. Were you at Talbert's Store precinct at the last election; if so, in what capacity?—A. As supervisor.
 Q. What time did you arrive at poll?—A. Seven o'clock.
 Q. Was the voting then going on?—A. Yes, sir.
 Q. Why did you not get there when the poll opened?—A. I went to wrong place.
 Q. Did you go inside the poll?—A. I did, when I first got there.
 Q. Did you remain?—A. No, sir.
 Q. Why not?—A. Some one said it was not my place; I then went out.
 Q. Who said this?—A. Democrats.
 Q. Was this all that was said?—A. Yes; all that was said to me.
 Q. Being a supervisor, why did you not remain anyhow?—A. He said this was his special property and this was not my place; get out; my place was outside the door.
 Q. Did he say why this was his special property?—A. No; he did not.
 Q. It being a public place, and you a public officer, why did you not still remain?—
 A. My reason for not staying was because I thought he might hurt me if I did not go.
 Q. Did you keep a poll-list?—A. No, sir.
 Q. Why not?—A. Because around the box was so crowded could not.
 Q. Where was the box placed?—A. About two feet in front of door.
 Q. Were there any persons in the poll other than the managers?—A. Yes, sir.
 Q. Who were they?—A. Democrat party.
 Q. Were there any Republicans there?—A. No, sir.
 Q. Did all the voters have an opportunity to cast their votes freely and without molestation from any one?—A. No, sir.
 (Objected as witness's opinion.)
 Q. In what way were they hindered or obstructed?—A. The door was crowded by Democrats who would not let the Republicans come in; this lasted from about 8 o'clock to 3.
 Q. What effect did this have on the Republican voters?—A. They staid till about 1 o'clock, then left.
 Q. Did any Republicans vote at all?—A. Yes, sir.
 Q. About how many?—A. About twenty-five.
 Q. How many went away without voting?—A. About one hundred and fifty.
 Q. Were there many Republicans at the polls when you arrived?—A. Yes, sir.
 Q. Did any of those go without voting?—A. I don't know.
 Q. About how many Democrats voted up to 3 o'clock?—A. Forty or fifty.
 Q. Why did the voting go on so slowly?—A. Because those who were there kept the box crowded and there were no more whites present.

RED HILL—EDGEFIELD.

Anderson Carter (p. 442) testifies as follows:

- Q. Were you at Red Hill polling precinct on the day of last election?—A. I was there as a United States supervisor.
 Q. What time did you get there?—A. Quarter before six in the morning.
 Q. What time did the polls open?—A. I could not tell what time they opened. I was not there.
 Q. Was the polls opened at six o'clock?—A. No, sir.
 Q. How long did you remain there?—A. Until half-past six.
 Q. What caused you to go away?—A. Mr. Ben. Glanton, one of the managers, told me I could not serve without my having my oath with me. I then showed Mr. Glanton my commission. A party of white men came up. One of them snatched my paper from me and tore one up, and said, "God damn, if you don't like it you need not take it." Others said, "You had better leave, and that mighty quick, and not let me see you here any more to-day; if you do I will put a light hole through you." I then left.
 Q. What did you do then?—A. I went home.
 Q. Was anything else done to you?—A. That is all.

Q. Was this said in a friendly or threatening manner?—A. Threatening manner.
 Q. Why did you not still remain?—A. I was afraid of being shot to death.

RICHARDSONVILLE—EDGEFIELD.

Richmond Mobley (p. 435) testifies as follows:

I was United States supervisor.

Q. Who was your clerk?—A. Willie Hazel.

Q. A Republican or Democrat?—A. I suppose a Democrat.

Q. How did you come to appoint him a clerk?—A. On arriving at the poll I sent for somebody to act as clerk for me, and I appointed Willie Hazel before the poll opened. Some of the managers said that was not the place for supervisor, saying, "Richmond, you had better go out," and I went out.

Q. After going outside, did you have a position so that you could see the box containing the managers' poll-list at all times during the day?—A. Until about half-past 1 I did.

Q. At this time what happened to prevent you?—A. A crowd of thirty-five or forty men in red shirts rode up to the poll singing, and I was compelled by them to leave my position. They remained from fifteen to twenty minutes, some singing and hallooing.

Q. Were there many men present at any time with red shirts?—A. Yes, sir; I seen a good many with red shirts.

Q. Did you see any persons with arms?—A. I saw a great many pistols, but no guns.

Q. Who had them?—A. Democrats.

Q. Did you hear any threats of violence or see any violence whatever that day?—A. None.

Q. Did you hear any fire-arms discharged on that day?—A. None.

Q. Did any one molest you that day?—A. No, sir; with the exception of a man snatching my papers out of my pocket. I caught hold of them, and he said, "damn you, let go of them." I then let loose. He kept the papers, and I have seen them since.

Q. Did you see the votes counted?—A. I did.

Q. Did the poll-list and ballots tally?

(Objected to on the ground of being secondary evidence.)

A. No, sir.

Q. What difference was there?—A. To the best of my judgment, there were a few more names on the poll-list than ballots in the box.

Q. What was done about this by the managers?—A. I don't know.

LANDRUM'S STORE.

Nathan Sullivan (p. 82) testifies:

Q. Where were you on the 2d day of November last, the day of the general election?—A. At Landrum's store.

Q. In what capacity, if any?—A. A United States supervisor for the Republican party.

Q. Did you keep a poll-list?—A. I did until about 4 p. m.

Q. Why did you not keep it longer?—A. It was taken from me.

Q. By whom?—A. The Democrats.

Q. Did they assign any reason for taking your poll-list?—A. They did not.

Q. Were any colored persons driven away from that poll by violence or intimidation?

(Question objected to on the ground that it is a leading question.)

A. Not until in the afternoon, after they had voted; some of the Democrats said they had no business there, and that they must go home. They went and did not return.

Q. State the manner in which the voters were generally sworn.—A. They were first one at a time, and then two, and afterward six at once.

Q. Were all the voters sworn this way, without regard to race or color?—A. Yes.

Q. Did you see any strangers vote there?—A. Yes; a good many.

Q. Do you know where they came from?—A. No.

Q. Was there a display of fire-arms around the polls; if so, by whom?—A. There were a good many by the Democrats; a few by the Republicans.

Q. Was there any firing of fire-arms?—A. Yes; in the evening; there was a deal by the Democrats.

Q. Were any other persons allowed in the poll besides the two supervisors, managers, and their clerk?—A. Yes.

- Q. To what party did these others belong?—A. To the Democratic party.
 Q. Were you present at the counting of the votes?—A. I was.
 Q. How did the ballots in the box compare with the names on the poll-list?—A. There were more ballots in the box than names on the poll-list—about 76 more.
 Q. What was done with this excess?—A. They were drawn out.

Cross-examination:

- Q. You said your duty was to construe the election. What did you mean by the word construe?—A. To examine closely and to look into it closely.
 Q. How many were there in the party who took your poll-list?—A. About thirty-five.
 Q. Did they all take it?—A. One of them took it.
 Q. Then you mean to say that a Democrat took your poll-list and not Democrats?—A. Yes; a Democrat of the thirty-five.
 Q. Is there any badge by which you could tell a Democrat from a Republican?—A. No; there was no badge. I told by the way they voted and what I heard them say.
 Q. Do you know the man who took your poll-list from you?—A. Yes.

JOHNSTON'S.

William Trott, witness for contestee (p. 546), testifies:

- Q. You saw no attempt on the part of Republicans to use the clubs which you have described, or any demonstration made by them on the 2d day of November last, which caused you to believe they intended to take forcible possession of the polls at Johnston, did you?—A. I did; I looked upon those clubs as a clear demonstration, for they were not of the length or size of walking-sticks; *I saw no use made of the clubs.*

JOHNSTON'S, EDGEFIELD COUNTY.

Willis Gomillion (p. 85) testifies:

- Q. Were you at any particular precinct; and, if so, in what capacity?—A. At Johnston's precinct, as a supervisor of the Republican party.
 Q. Did you discharge your duty as supervisor?—A. Yes; until about 2.30 p. m.
 Q. Why did you not continue to act?—A. I was seized by a red-shirter, who said to me, "God damn you, go down from here." There being no protection for me I went down and did not return, because I was afraid to do so.
 Q. Afraid of what?—A. I was afraid that the Democrats would hurt me. After I went down and got about thirty or forty yards I was overtaken by the same gentleman and two others who requested me to stop, and told me to come back and go with them. I asked them where; they said, "On our side." I declined. About that time was surrounded by red-shirters; I don't know how many. Some of them said that they would assure me that I would not be hurt; "Come and go back." I then discovered or saw Anthony Miles lying dead a few steps off, and I thought that I had better get away.
 Q. How came he dead?—A. He was shot by some one, just above his eye, with a gun.

Q. Before you left the poll what seemed to be the disposition of the Democrats, or those wearing red shirts, for peace and quiet?—A. Right around the poll where I could see was peaceable, but outside I could hear the reports of guns and pistols.

- Q. What was the consequence of all this disturbance?—A. The colored people all ran.
 Q. Did they vote before leaving?—A. About twenty-five or thirty voted; the others did not.
 Q. Were any other persons in the room besides the two supervisors, the managers, and their clerk?—A. Yes; red-shirters.
 Q. Do you know the politics of the managers?—A. They are said to be Democrats.
 Q. Were you in position to see the voting all the time?—A. Yes.
 Q. Was more than one sworn at a time?—A. Not that I remember.
 Q. To what political party did these men wearing red shirts belong?—A. To the Democratic party.
 Q. Are there many colored Democrats around that precinct?—A. I think there were but ten or fifteen.
 Q. You spoke of a great many colored men leaving the poll without voting. Were they Democrats or Republicans?—A. They claimed to be Republicans in my presence.
 Q. Had these men remained at the poll and voted, what ticket would they have voted?

(Question objected to, as it is only a matter of opinion, and leading.)

Q. I know of 200 or more of them taking the Republican ticket.

Q. Who was the Republican candidate for Congress?—A. Robert Smalls.

Butler Hunt, on p. 86, testifies :

Q. Did you vote there?—A. I did not.

Q. State why.—A. Because I was rejected from the box.

Q. On what grounds?—A. Because I saw no way to get to the box. The Democrats was standing in front of the box; one said to me, "Stand back, you colored people, and I will insure you that you shall vote here to-day." Then I gave back, and the Democrats began to ride up and down the streets on horses, waving clubs, pistols, and some swords; then I got back on the other side of another house and remained until about 12 m. Then I went to the depot and sat down, after which I heard discharges of guns and pistols. All the colored people, with myself, ran into a field opposite the poll. When the firing ceased I returned, and found Anthony Miles lying on the street dead. I staid about five minutes, and seeing no chance to vote, and hearing the Democrats say that all these d—d niggers shall not vote here to-day, I thought that there was no use for me to stay any longer.

Q. Did you leave alone?—A. No; four or five went along with me.

Q. Had they voted?—A. They said not.

Q. Who was the candidate on the Republican ticket for Congress?—A. Robert Smalls.

Q. Would you have voted for Smalls had you the opportunity?—A. I would.

John Hammond, p. 87, testifies :

Question. Were you in Edgefield County on the 2d day of November last? If so, at what place?—A. At Johnston precinct, for the purpose of voting.

Q. Did you vote?—A. No.

Q. Why not?—A. Because I could not get into the room where the box was. The door was crowded by Democrats all day, and I could not get in.

Q. Was there any disturbance of any kind at Johnston's?—A. A shooting riot took place there about 11 o'clock a. m.

Q. Who started and done this shooting?—A. The white men. One man was killed (colored man).

Q. Did this killing have any tendency to drive any voters from the polls?

(This question objected to on the ground of its being leading.)

A. The colored people ran off from the poll.

Q. Did they return?—A. A very few came back to see about the man who was shot.

Q. Do you know of any colored men leaving the poll without voting, of your own knowledge?—A. Don't know how many left, but I think that there were as many as 700 or 800 who left.

Q. Are you generally acquainted with the colored people in this section?—A. Yes; I was born and has lived in this section all my life.

Q. What are their politics?—A. Republicans. Now and then you will find one Democrat.

Q. Who was the candidate on the Republican ticket for Congress?—A. Robert Smalls.

Q. Had you not been prevented would you have voted for Smalls?—A. Certainly I would.

Cross-examination :

Q. Do you know every one of the seven or eight hundred men who left there without voting that day?—A. No.

Q. About how many did you know?—A. I cannot tell how many, but I knew about three or four hundred. I went there with a crowd of one hundred and thirty that I know.

Q. How do you know that the others were Republicans?—A. They went there in Republican clubs, and said they were Republicans.

Q. Did you speak to all of these men?—A. No.

Q. Then they did not tell you they were Republicans?—A. The head of their club told me so.

Q. Did any of those seven or eight hundred come there without being in a club?—A. No.

Q. What did they have in their hands?—A. They had walking sticks; some of them as large as a chair-round.

Q. Were not most of the sticks freshly cut?—A. I suppose they cut some coming along the road; we generally carry sticks.

Q. Did you see the shooting when it commenced?—A. Yes.

Q. Did you see every shot fired?—A. No, sir.

Q. How do you know that the Republicans did not fire any?—A. If they fired any I did not see it.

Q. What did you do when the firing commenced?—A. I ran in between two stores.

Q. About how many shots were fired after you went between the two stores?—A. Very few; not as much as ten.

Q. How near were they together when firing commenced?—A. About two paces.

Q. You say you left about 1 p. m. Do you know who came back after you left?—A. No.

Q. Then how do you know that none of these seven or eight hundred men came back?—A. They say that they did not go back. Some of them never stopped running till they got home.

Q. Have you seen all of them since then?—A. I have seen the greater part of them.

Q. Did you take the trouble to ask each one if he went back?—A. If I did not take the trouble to ask them, they took the trouble to tell me.

REFERENCE TO TESTIMONY FOR AIKEN COUNTY.

Aiken Court-House:

James Major, p. 167.

Samuel Harvey, p. 178.

George Short, pp. 174, 175.

George Knight, p. 180.

Moses Johnson, p. 179.

Jack Robinson, p. 182.

Col. E. M. Brayton, p. 160.

Mr. Crossland, p. 228.

James Major, p. 167.

James T. Wingard, p. 310.

Silverton:

J. H. Holland, p. 144.

J. P. Shells, p. 155.

D. Bing, p. 130.

George Washington, p. 133.

Windsor:

William Trowell, p. 136.

General Piper, p. 140.

Creed's Store:

Alexander Williams, p. 73.

L. B. Coker, p. 182.

Fountain Academy:

N. J. Parker, p. 79.

Kneece's Mill:

Peter Waggels, p. 184.

A. Holmes, p. 77.

Jourdan's Mill:

W. T. Tally, p. 72.

AIKEN COUNTY.

The uncontradicted testimony as to Aiken Court-House is a disgrace, not alone to the participants therein, but to the civilization of the age.

Under the law of South Carolina an elector may vote at any precinct in the county, and many voters from the precincts where violence and intimidation were greatest went to the town in the hope of receiving protection in the exercise of their rights of franchise. This was particularly so as to the Ellenton section, which was the scene of the horrible bloodshed in 1876, and where a Republican meeting was broken up by violence only a few days before the election. But their hopes of peace

and order were doomed to disappointment. A barricade was erected in front of the poll, at one end of which the voters were to enter, and at which end a Democratic guard was placed to keep back Republicans, whilst the Democrats went in at the other end of this barricade and voted freely.

All the managers at this precinct were Democrats, and, according to the testimony of one of them, there was "a constant stream of white voters for over three hours." This was from the time the polls were opened. About the end of that time (9 o'clock, perhaps) a riot was inaugurated by cutting Republicans in the crowd at the entrance to the barricade, and by throwing Cayenne pepper into the eyes of colored voters. At this poll, a piece of artillery was trained upon the end of the barricade at which the Republican voters were gathered, awaiting an opportunity to deposit their ballots.

The testimony conflicts as to whether this gun was loaded or not, and also as to the circumstances under which and the purpose for which it was there; nevertheless, it had the natural effect of aiding in the intimidation of Republican voters, and when the disturbance was raised by the cutting with knives of Republicans, the Palmetto Rifles, a military organization of the town, were drawn up in line, armed with State guns. There is an effort on the part of some of the contestee's witnesses to show that this was not the military town organization as such, but rather a number of this company acting as State constables. This fact is immaterial, however, for the conduct of this company shows plainly that instead of acting as peace officers they were a part of the mob engaged in the illegal work of intimidating and terrorizing voters. Mr. W. C. Jordan, a member of the Aiken bar, and James T. Wingard, a town marshal, both of them witnesses for the contestee, distinctly testify that it was the military organization. By these means the bulk of the Republican voters were kept back, and when the polls were closed there were a large number of electors still waiting to vote, and although they had been waiting all day for an opportunity of voting, were finally denied the right. It is estimated by the testimony of several witnesses that there were 300 Republicans who would have voted for the contestant, but who were prevented from casting their ballots by the Democrats violently crowding the polls.

James Major (p. 167) testifies :

Q. Were the people allowed to vote freely up to that time?—A. No, sir.

Q. Why not?—A. They barred them from coming in with a stick.

Q. Who did?—A. The Democrats did; they had both entrance places barred with a stick, and they would not allow them in, except every fifteen or twenty minutes they would allow them to come in.

Q. Allow how many in?—A. Some six.

Q. Were the white men and colored men allowed to come in indiscriminately?—A. No, sir.

Q. State how they were admitted.—A. The colored people all was packed on that end where they said they had to come in; they were strong from the entrance, packed one upon another up to the poll, and the Democrats had a stick across; at this end where I said they had two men with two sticks across the door, and they let them in. They said no one could come in there. After a while they brought up a white man and said he was a sick man, let him go through that way. I had a good many sick men too. I sent off and brought up my sick men, and they said, "They can't go in here." Finally, all the whites crowded the poll to get in this way.

Q. Which end are you speaking of?—A. The whites went through the south end.

Q. All the white people?—A. Pretty much all; if the colored men went up those in the crowd were cutting them up with knives; they got the people so excited with their cutting them up with knives. I went in there when the crowd was thin.

Q. Did the most of the white voters come in from the south side?—A. Yes, sir.

Q. And the colored people were kept at the north end?—A. Yes, sir.

Q. Would the managers of election let the white men in while the colored people

waiting on the north side to vote?—A. Yes, sir; they staid there until the poll closed, 'clock.

Had there many colored men voted at that time?—A. Not a great deal; there more white voters than colored, because they commenced to blockade them from imp, and they kept them barred out until the poll closed. At 6 o'clock in the ng they were standing there.

You don't know what the difficulty was when the cutting took place?—A. They hem because they went in there to vote.

How do you know that?—A. Because I was afraid I would get cut myself. Because you were afraid that was the reason Harvey was cut?—A. No; he was in the crowd because he was pressing to get in.

Was anybody cut before you voted?—A. I voted first before this cutting took

Do you know yourself of the difficulty between these men when the cutting took ?—A. Yes, sir; I know.

State what was the difficulty between them.—A. Because they were standing up to get in to vote, and they cut them to make them leave that place.

This you know to be the truth?—A. I know it to be the truth; that was all the n, because they were standing perfectly still doing nothing.

Was there during the day a colored man let in at this exit end of the barricade was too sick to vote?—A. Yes, sir.

About how many?—A. I could not say exactly how many, but I know two or slipped in that end.

But was there not some who were sick that they let in that end?—A. After they Uncle Sam so bad they let him in.

Samuel Harvey, 70 years of age, who was one of the men cut, testi- (p. 178):

What sort of a man?—A. A white man, that had got around to me in coming d; I was standing with my face turned from the poll.

And you got cut where?—A. In the right breast.

Did you have that coat on when you were cut?—A. Yes, sir [showing cut in his a little over an inch long].

Has the wound healed up?—A. Yes, sir; the doctor put a plaster on it and it well.

Can you show us the wound without taking your coat off?—A. Here it is [Show- wound on right breast near the collar bone].

Were you creating any disturbance at the time?—A. I never said anything after cut me.

Was the colored people creating any disturbance?—A. No, sir; they were stand- here quiet.

Had there been any disturbance around?—A. Not with the colored people.

he pretext that voters had come from other counties was shown ely to be such—by the testimony of one of the managers—in the of three men only who had come from other counties and attempted ote at the polls. Aiken County is composed of parts of Edgefield Barnwell Counties, and the testimony shows that some voters came that portion of the county which had formerly been Edgefield; but legal right to vote at Aiken Court-House is beyond dispute. But content with suppressing Republican votes, the Democrats stuffed box with 36 fraudulent Democratic ballots. In a former contest be- in the parties to the present one, when their relations were reversed, h complaint was made by the Democrats against Government troops g used at some of the polls in this county as a peace posse. Now, is case an organized volunteer company, armed with rifles, was a of the mob and encouraged and aided in the unlawful act of intim- ing and obstructing voters. In view of the facts, your committee 'opinion that this particular box should be thrown out of the count. El. E. M. Brayton, United States internal revenue collector, testifies (60):

Which end did they go in at?—A. The end designed for the voters to go in was e northern end.

And the exit was at the south end?—A. Yes, sir; at the north end was gathered

this large mass of colored people waiting to vote, and that crowd remained and seemed to me to be undiminished while I was at the poll.

Q. Did many vote while you were there?—A. I was not near enough to the poll to see who did and who did not vote; but judging from those who came out, and from the size of the crowd continuing, and the complaints of the people that they were unable to vote, I should judge that very few voted while I was there.

Q. Did all the voters pass in at the north end?—A. No, sir; I saw several passing in at the other end, and it seemed to be the general understanding that whenever white people wanted to vote that they would be taken in that end intended for the exit and allowed to vote. While that was going on of course the colored people would be blocked up in the passage-way and their voting discontinued. It was understood the large bulk of white people had voted early in the day.

Q. What questions were asked of you?—A. I was asked where I had my washing done, where my family's washing was done, and where my family was living. There were not very many questions asked of me, I being so well known here; but there was considerable time taken up by consultation among the board of managers, and the arguments addressed to them by the challengers who were present there.

Q. From the general conduct of the managers and the persons around the poll, did the Republicans have the same opportunity to deposit their ballots as Democrats had?—A. No, sir; I can hardly conceive a more unfair and partisan election than I witnessed upon that occasion. I know, from the manner of the managers and the challengers, and of those who stood within the room at the time I attempted to vote, that there was a hostility and objection to everything existing on the part of those who seemed in charge of election affairs. During the time that I attempted to vote there, questions were propounded or suggestions by those outside—sometimes those inside the polling place who did not appear to have any official connection with the election; and there was an insolent, bitter, violent tone and look upon the part of all of those that I saw about the ballot box.

Mr. Crossland, Democratic manager, called by contestee, testifies (at p. 228):

Q. Did you not see a great many negroes here that day that reside in those remote sections of the county?—A. Yes, sir; I saw some from various remote parts of the county.

Q. Did you not see some there from Edgefield?—A. I heard at least three acknowledge at the poll that they were from Edgefield County; strangers to me.

James Major (p. 167) testifies:

Q. Were there not a number of colored people who live in other parts of the county who voted over here?—A. Oh, yes, sir; they could not vote other places in the county, and they came here because they thought it was more peaceable, and they found it as rough as anywhere else.

Q. You say there were 300 that did not vote?—A. Over that.

Q. Are you willing to testify that they did not vote during the day?—A. I will; that a great many that were standing at that poll when it closed that did not vote, and I will swear to it.

Q. Could not a number of these men have voted elsewhere in this county during the day that were here that night?—A. No, sir; they did not have time, they did not have no horse to ride about from the time they came here; they staid here until after the poll was closed.

George Knight (p. 180) testifies:

Q. Why did you not vote?—A. I came soon in the morning, and it was so crowded we could not get in, and the white folks raised a sort of disturbance, and in the evening when I went to vote there were some persons standing at the window and they threw some Cayenne pepper in my eye.

Cross-examination by W. W. WILLIAMS, Esq., counsel for contestee:

Q. About what time of day was this pepper thrown in your eye?—A. About 2 o'clock.

Q. By whom?—A. I don't know who did it; I did not see after they threw the pepper in my eye; it just blinded me; I had to get lard and rub it in my eye for a day or so before I could get it out.

Q. Where were you standing?—A. We were trying to squeeze to get in to vote.

Q. How far from the barricade?—A. By the steps opposite the door going up-stairs.

Q. No other stairs but that at the end of the barricade?—A. No, sir; some one said "look out," when the pepper struck me blind.

The following testimony of Jack Robinson, elicited at the cross-

mination, sums up the results of that which preceded it, very pointedly (p. 183):

Cross-examination by W. W. WILLIAMS, Esq., counsel for contestee:

Did you attempt to vote when you got there, at 7 o'clock in the morning?—A. sir; I tried.

What was the extent of your efforts?—A. From five minutes to seven, and I d there until 1 o'clock and tried to get in, and I could not.

Stood where?—A. Walking up following the crowd; I went off at 1 o'clock, and been gone not more than twenty-five minutes and came back.

If you had staid where you were in the morning, and had not gone off, would not have got to the poll?—A. At 6 o'clock I would have been further off than I when I got there. When I came back the men that I left there were not nigh e. I was trying to get in; I was making my steps as near to the poll as I could.

Were you in that line continuously from 7 to 1?—A. Yes, sir; the reason I came was I was kind of sick.

You never left it during the morning?—A. No, sir; I stood right there.

When you entered the line you stood there until the poll closed?—A. Yes, sir; I the poll closed. When I stepped out from the poll it was when the pepper was wn; they threw it before I got that far.

Joses Johnson on cross-examination (p. 179) testifies:

If you had taken your position in the line at 7 o'clock in the morning, would it have come your turn before six in the evening?—A. I stood in the line; I was not his press, because I could not get to the poll. I tried to get in where the white ple went to vote, and it was crowded with white people, and I asked Mr. Hender if I could get in to vote there. He said, "You cannot get here now, but we will to make a chance for you after a while." After a while I came back and spoke to again, and he said, "You cannot get a chance; you will have to come back after hile," and I kept going until I could not vote at all, and then they commenced to pepper in the men's eyes.

George Thorn (pp. 174 and 175) testifies as follows:

ngus Brown, who was clerk of court, ran into the crowd with a double-barrel i; upon that Elias Goodin and Mr. Harlin's son Span ran in the crowd with a y pistol, and said, "You damn sons of bitches!"

Who were they speaking to; the colored voters?—A. Yes, sir; they then fell out in. *I saw Lon Cutner go and move the cannon more in a position upon us.* I looked on him and saw when he done it. The whites were crowding down on the colored guns and pistols in their hands. Mr. Hanlin said, "I want to talk with them," he went then in the alley-way of Loops & Lindiken, and said, "We want peace quiet;" the remark was made by us that we came here for peace, and we wanted ole and go home; but they would not let them vote; instead *the poll was crowded day by white men in order to keep the colored men out.* I stood a while in the morning the south end, and looked and made my remarks to them to put those polls back same place where they were; that they had raised the riot before, and it must be intention to do something wrong again; and Mr. Kline said "You better leave here." id, "I am not troubling you; I am standing on the street." While I was standing re a vote was snatched from one of our voters by Thomas Moss, and the colored ran in there after him, and Mr. Kline up with his foot and said "Get out here, you of a bitch!" D. A. Henderson led him to the door by the throat, and as he went the door he kicked him. I remember seeing *gentlemen of this town* vote as high as times, and I can name them name by name.

Were these men who were armed with guns and fixed bayonets Republicans or ocrats?—A. Democrats.

Do you know where they got these guns from, where they were before they ught them in the street?—A. When the military company used to drill they car- their guns home, but that morning they came out of Mr. Henderson's office.

About how many of them?—A. Twenty-five or thirty.

Cross-examination:

Can you recall any time during the day that there were not a good many Dem- ts around this box?—A. If I was to say it was not I might say what was not so.

Was there any time that there was not?—A. I cannot recall no part of the day there was not a crowd.

They were around there all day?—A. All day.

Was not the Republicans around this box from the time it opened until it ed?—A. They were there as a fact, trying to get in.

At what time of the day did that four hundred men leave that never came

back?—A. At the same time when the first riot rose; when the guns were turned on them, and pistols, to the best of my knowledge, there were two hundred that went off that time and did not vote.

Q. When did the other two hundred leave?—A. At the second riot, which took place between 2 and 3 o'clock in the evening—in the afternoon like.

The spirit which actuated the political friends of contestee at this court-house was manifested throughout Aiken County, and the difference in violence and lawlessness is only of degree.

At Summer Hill precinct all the managers were Democrats, and 61 fraudulent Democratic ballots were stuffed in the box. In withdrawing this excess the managers felt for Republican tickets (pp. 157, 158), and succeeded in drawing out 58 Republican and only 3 Democratic tickets. This was illegal, as it required that the excess shall be withdrawn indifferently.

Silverton precinct is in the vicinity of Ellenton, which, as already stated, was the scene of the riot in 1876. At this place a Republican meeting was broken up by violence on the part of Democrats on the Saturday preceding the day of election, and J. H. Holland, a Republican leader who had been appointed a supervisor for Miles's Mills precinct, was one of the speakers. He was most cruelly beaten by a portion of the crowd attacking the Republicans, and was prevented by these disturbers of the Republican meeting from returning home on the train, as he had come. Consequently he was forced to walk home, a distance of 40 miles, through swamps and woods. On the day of election the Republicans were driven from Silverton, and not a single one of them permitted to vote at that place (pp. 154, 155, 156).

J. P. Spells testifies:

Question. Who were these men who assaulted these Republicans and drove them away; were they Republicans? What were their politics?—Answer. The Democratic red-shirt rifle clubs from Silverton. I heard one gentleman say it was the Silverton crowd.

Q. Were there many of them there Democrats?—A. I might guess about two hundred in the crowd.

Q. That came over from Silverton?—A. Yes, sir.

Q. They were a large crowd?—A. Yes, sir.

Q. Were there many Democrats there besides these?—A. Yes, sir; about seventy or seventy-five; they came and met them.

Q. What time in the morning did this shooting commence?—A. About 9 o'clock.

Q. Had there been any disturbance before that?—A. No, sir; the shooting commenced by these men around the house.

Q. What time did that shooting commence?—A. That was just before 9 o'clock when this crowd at the house commenced shooting. Then I saw the crowd coming up shooting, and that was the crowd that ran the Republican voters from the poll.

Q. Who were these men that made threats against you?—A. They were Democrats.

Q. Were there many Republicans driven from the polls?—A. At that time there was about one hundred that ran off to the swamp.

On cross-examination:

Q. About how many men, white and colored, were there when this crowd came up from Silverton?—A. I suppose there was about seventy-five white and about one hundred colored.

Q. Did you see these people go into the swamp?—A. Yes, sir. I was standing opposite the door, and saw them when they were going from the poll, and this crowd pursued them there before they returned to the house.

See also the testimony of D. Birg (p. 130):

Q. Did you vote at all at that election?—A. No, sir.

Q. Why not?—A. I went to Low Town, and before I got a chance to vote there they wanted some one to carry some tickets down to Silverton, and I thought I would have a chance to vote there, but could not.

Q. Why couldn't you vote?—A. Because the white people had driven all the col-

ored people off; they said there were no tickets there; I told them I had tickets; they said there was no manager there to take charge of them; I told them to go to Low Town; I met some white people coming up the road, and as we were coming to Low Town they met these black people, and they ran them off. I heard not all of them got to Low Town at all.

Q. You met a party of colored men that were going to Silverton?—A. Yes, sir; and told them to go to Low Town.

Q. Did you go back to Low Town, Wells?—A. Not to the poll. There was not a colored man there; they had run them off.

Testimony of George Washington (p. 133):

Q. Where did these *Democrats* come from that did this shooting; did they belong around there, or come from somewhere else?—A. A little way off from there, about five or six miles.

Q. From which way?—A. Towards Ellenton.

And on cross-examination (p. 155):

Q. How many colored men left when you did?—A. About fifteen.

Q. How many did you leave there?—A. I left about one hundred; but some of them beat me home and I started before them.

Q. Don't you know that this crowd that came by your house had voted at Silverton, and had come to Low Town to vote again?—A. The colored men don't do such as that; the white men will do that, but there was not but a *single* vote cast by a colored man.

And George Washington was correct; not one Republican vote is counted at Silverton.

At Windsor the Republican who had the tickets for his party for distribution to voters was stricken and his life threatened if he did not leave. In consequence of this there were no ballots for the Republican voters. See testimony of William Trowell (p. 136):

Q. What time did you get there?—A. Between 10 and 11 o'clock when I got there.

Q. Did you vote?—A. No, sir.

Q. Why not?—A. Well, there "as no tickets there.

Q. Did you see any other men there who wanted to vote and could not vote because there were no tickets there?—A. I seen nine men there besides myself, and asked them if they had voted, and they said not, because they could not get any tickets.

Q. What ticket did you want to vote?—A. The Republican ticket, if I voted at all.

Q. Straight?—A. Straight right through.

Q. Did these men tell you what ticket they wanted to vote?—A. They said they wanted to vote the Republican ticket. Some I knew and some I did not.

See also the testimony of General Piper (p. 140):

Q. Why did you leave?—A. This man John Goss—

Q. Is he a Democrat or Republican?—A. A Democrat. He came up and asked me why I was there taking the names. I told him I was appointed by the chairman of the Republican party to see how many men voted the Republican ticket. He said, "To see how many damn rascals like you there are," and he made a grab at my book. In that time another man came up and he knocked me in the mouth. He asked me if I wanted his stick. I told him no, and he struck the man with tickets; with that he jammed me with his pistol.

Q. How many pistols did you see?—A. Five or six.

Q. Did they gather around the ticket distributer, too?—A. Yes, sir; me and the ticket distributer were together, and there was about 100 around us.

Q. Democrats, you say?—A. Yes, sir.

Q. Did many of them have pistols or guns?—A. I did not see any guns; I saw several pistols.

The only contradiction or explanation of this testimony is that of Trial Justice Keenan, on p. 307, who expressly says that he was at one end of Windsor and the box at the other; and he therefore speaks from hearsay.

At Hankerson & Page's Store (pp. 188, 190, 192) the box had 26 fraudulent Democratic ballots stuffed in it, and during the progress of

the election the Democrats were shooting off pistols, and carried off a clerk who was keeping a list of the Republican voters and whipped him with switches until he bled.

E. S. Green (p. 192) testifies that he was born 6th of May, 1859, and as follows :

- Q. Did you vote ?—A. No, sir.
 Q. Did you intend to vote ?—A. Yes, sir.
 Q. What ticket did you intend to vote ?—A. The Republican ticket.
 Q. Whose name on it for Congress ?—A. Robert Smalls.
 Q. Did you vote ?—A. No, sir.
 Q. Why not ?—A. They told me I was not of age.
 Q. Who told you you were not of age ?—A. Those white fellows down there.
 Q. Did they prevent you ?—A. They told me it was no use to go in there, I was not of age; and I did not care to insist to go in there.
 Q. What were they doing ?—A. Shooting and hallooing.
 Q. What did they do with you afterwards ?—A. They whipped me.
 Q. What did they do with you when they said you could not vote ?—A. They turned my head and said I could not vote.
 Q. Why didn't you go up and put your vote in, anyway ?—A. There was a crowd there, and I did not care to insist upon it.
 Q. Were you afraid to do so ?—A. Yes, sir.
 Q. Were you afraid to do so because of the shooting and threats around there ?—A. Yes, sir.
 Q. What were you doing there ?—A. I was taking names down there. They made me stop.
 Q. How did they make you stop ?—A. They said I should not take any more names, and I put the book up. Then a colored man came over and said I had better go to his house, as they were cursing and hallooing so around there, until that crowd left.
 Q. Did you go to his house ?—A. No, sir.
 Q. Why not ?—A. I was not there more than five minutes when they carried me out in the woods and made four or five more hold pistols over me; and then they cut a switch and whipped me.
 Q. Whipped you badly ?—A. Yes, sir.
 Q. Bring any blood ?—A. Yes, sir.
 Q. What did they whip you for; did they say ?—A. Because I went there to take names.
 Q. For the Republicans ?—A. Yes, sir.

At Creed's Store (pp. 73-182) the adherents of the contestee raised a disturbance by shooting among the Republican voters, and rushed into the school-house where the poll was held, saying, "Kill the damned niggers, for they have no business here; run them out." One of the managers advised the supervisor to leave, and after that the Democratic party had the count as it pleased. The Democratic supervisor admits that the box had a plethora of votes, but could not tell what number were drawn out.

Alex. Williams (p. 73), supervisor at Creed's Store, testifies as follows :

- Q. Did you discharge the duties of supervisor to the closing of the polls ?—A. I did not.
 Q. Why ?—A. About 5 o'clock p. m. the Democrats began shooting at and knocking some colored men, and then came running in the house where I was. I asked one of the managers if it was safe for me to stay there. He said, no; he thought it was best for me to get out of the way. The crowd came in saying, "Kill the d—d niggers, for they have no business here; run them out." I then squeezed through the crowd and got out. Mr. Kreps, the manager who advised me to leave, was, when I left, walking about in the room where the box was with a double-barrel gun under his arm.

L. B. Coker (p. 182) testifies :

- Q. Which man ?—A. The supervisor. The Democrats said, "Let's go in and take that damn son-of-a-bitch out," alluding to the Republican supervisor.
 Q. What did he do ?—A. I don't know what he did.
 Q. Did he stay in the poll ?—A. I don't know; I made my escape as soon as I could, and left.

Q. What became of the other Republicans that were there?—A. They ran away before I did.

At Fountain Academy (p. 79) a party of Democrats around drove sixty Republicans from the poll (p. 79). N. J. Parker testifies as follows:

Mr. Courtney came out, cocked his gun, cursed us. I left them there and went a little way for a drink of water. On my return I saw the crowd of colored men, some fifty or sixty, running from the poll. When I got up to the poll I saw Mr. Courtney striking the colored men with a gun. Some other white men had pistols in their hands, and said to the colored men, "You d——d niggers, if you don't leave here we will blow your God d——d brains out." They followed the colored men as they ran, and threw knots at them and beat them over the head. Mr. Courtney struck one colored man in the mouth and caused it to bleed. After the colored men left, the crowd of white men went to Henry Peterson's house and asked him if he had anything they could get to feed their horses. Mr. Peterson told them he had nothing that he could spare.

Q. Did you go off with the crowd of colored men?—A. Yes. We stopped against Peterson's house and consulted whether to go back to the poll or not. By this time Hoyt Jordan, who had on a badge and acted as marshal, asked what was the matter. From one to another began telling him what had happened. Mr. Bill Jordan came up and told us to go back to the poll and vote; that the trouble was all over. Some of them started back on Capt. Bill Jordan's word. Mr. Hoyt Jordan called me to him and advised me to take my men, meaning the Republicans, and go home. He had said before that we had better not go back to the poll—if we did there would be trouble, and that if one man was killed there that day, many would be killed. We did not go back.

Q. Why did not you and your friends go back?—A. I was afraid to go back myself and the others so expressed themselves.

At Kneece's Mill (pp. 77–184) a similar party from Edgefield County intimidated and obstructed the voters, took from the supervisor his poll-list and tore it up, declaring, "This is a *white man's country* and we intend to rule it," and allowed him twenty minutes to get out of the way.

KNEECE'S MILL.

Peter Waggles, the United States supervisor, testifies (page 184):

Q. Did you keep a poll-list?—A. Yes, sir.

Q. Did the Democratic supervisor keep a poll-list?—A. He did not.

Q. Were you present when the poll closed?—A. I was not.

Q. Why not?—A. I was prevented.

Q. Prevented how?—A. My poll-list was taken away, and I was driven from the poll.

Q. What time in the day did this happen?—A. About twenty minutes to four.

Q. Up to that time had everything been quiet and orderly?—A. There was whooping, and hallooing, and shooting all day.

Q. Much of it?—A. Occasionally there would be the firing of a pistol.

And on page 185:

Q. What was the shooting for?—A. *These men were riding from one poll to the other. When they would come in squads they would yell and halloo and shoot their pistols. The poll I was at was between two polls.*

Q. They would pass from your poll and go to the others?—A. Yes, sir.

Q. At what time in the day did you leave the poll?—A. About twenty minutes to four.

Q. Why did you leave, that is, what occurred to drive you away?—A. *I was ordered away, and my poll-list taken away and torn up.*

Q. By whom?—A. A party of white men.

A. Holmes (p. 77) testifies:

Q. Did these men remain there?—A. They remained about 1½ or 2 hours; they then left, saying that they were going to Holson's Cross-Roads.

Q. Did they come back?—A. Yes; *they came when it was time to count the votes, and brought others with them.*

Q. Did any other men come up there on horseback?—A. Yes.

Q. Do you know Peter Waggels?—A. Yes.

Q. Did you see him on that day?—A. Yes; I went with him to the poll.

Q. In what capacity was he there?—A. United States supervisor.

Q. Did he keep a poll-list?—A. Yes.

Q. From what time and to what time did he keep this list?—A. From 6 a. m. to about half past eleven o'clock a. m.

Q. Why did he not keep it longer?—A. I was not there when he stopped keeping the list, and don't know why he stopped; I went off, and when I came back I saw them leaving; they walked off as if they were afraid.

At Jordan's mill (p. 70 and 72) the supervisor was not permitted to see the box at the opening of the poll, as the law requires it to be publicly opened; about fifty ballots were stuffed into this box. The manager's clerk thought there were not so many by his poll-list, but he seems to have left the poll several times, and his denial of having drawn a knife on the supervisor is contradicted by three witnesses. Several voters, who are specifically named, are proven to have voted here and at Hutto. Mr. W. S. Salley (p. 72) testifies as follows:

Q. State how the voters were sworn.—A. While the voters were being sworn some of them would take their hands down and would not be sworn, but would vote. Mr. James, the Republican supervisor, called the attention of the managers to this several times.

Q. Did you or did you not see a number of men come to that poll wearing red shirts and vote there?—A. I did. They voted and went from there towards Hutto's poll.

Q. Did you recognize any of them?—A. Yes; John Cook, Larking Garvin, and Doc Abels; those are all that I knew.

Q. To what political party do they belong?—A. To the Democratic.

The swearing of the elector is a check on repeating and is required by law, but the law was of secondary importance to the partisan managers of this poll.

The statements represent this county as casting 6,447 votes, whereas by the census of the same year there were only 5,985 males over twenty-one years of age, so that if every elector had voted there are 562 more votes than voters, and this, too, in the face of the fact that hundreds of voters were excluded from the polls. The testimony shows that in this county the vote was essentially upon the color line, and according to the census of the same year there were only 2,873 white males over twenty-one years old, so that if every one had voted for contestee it would require 2,107 colored votes to have given the contestee the 4,980 votes claimed for him.

In 1876 both parties had a full national, State, and county ticket in nomination, and the campaign is historic, yet the whole vote of this county that year was only 4,820. The pretended vote of 1880 is an increase of 1,627, indicating an increase of more than 25 per cent. of votes for a campaign in which only a national ticket was run, and yet as an illustration it may be noted that at Silverton precinct in 1880 not a single Republican vote is reported, while in 1876 it counted 232 for the present contestant, and only 182 for present contestee. In 1876, at Aiken Court-House, the contestant received a majority 327 over the present contestee, whilst in 1880 the present contestee is reported to have received a majority of 336.

Corrected vote of Aiken County is stated:

| | |
|---------------------------|---------|
| Tillman..... | 4,980 |
| Deduct Aiken C. H..... | 719 |
| Deduct Silverton..... | 225 |
| Deduct Creed's Store..... | 231 |
| Deduct Windsor..... | 396 |
| | — 1,571 |
| | 3,409 |

| | |
|---------------------------|-------|
| Small's | 1,467 |
| Deduct Aiken C. H..... | 383 |
| Deduct Silverton..... | |
| Deduct Creed's Store..... | 16 |
| Deduct Windsor | 10 |
| | — 409 |
| | 1,058 |
| Tillman's majority..... | 2,351 |

HAMILTON COUNTY—BRUNSON POLL.

One of contestee's witnesses testifies that there were over 200 ballots stuffed into the Brunson box, whilst another of them (page 100) says there were 232; that the Democratic ballots "were thinner, and I think smaller." As to distinguishing them by the touch, he says, "Not always; could sometimes. It was more from the peculiar manner in which the Republican ballots were folded that I could tell them from the feeling when in my hands." The terrorizing and intimidation at this poll seems to have been fearful. The night before the election armed bodies of drunken Democrats rode through the neighborhood discharging arms, threatening and abusing Republicans. This was continued next day at the polls, which were held in an old store-house filled with these disorderly people, whilst the door was guarded and only one Republican admitted at a time. The testimony of E. A. Brabham gives a shocking account of the farce of the election and of the repeating by Democrats, which is fully corroborated by other witnesses.

EARLY BRANCH.

At Early Branch there was a crowd of drunken Democrats who rode between there and People's poll repeating and stuffing the box, raising rows, threatening Republican voters, beating them, discharging pistols, and behaving in the most riotous manner. (Record, pp. 107, 111, 413, and 414.)

BEACH BRANCH.

At Beach Branch the managers refused to allow the supervisor to act, and he had to leave in order to avoid being forcibly ejected. A squad of Democrats took from the messengers 1,200 Republican tickets, and threatened to kill them if they went to the polls. Not a single Republican was permitted to vote there. (Record, pp. 5, 7, 8, and 12.)

LAWTONVILLE.

At Lawtonville the poll was held right at the door at the top of the staircase running up on the outside of the building. A large number of drunken Democrats were on hand, uniformed in red shirts, and well armed. They led the supervisor down stairs, and warned him "to escape for his life." Later in the day a party of them charged upon the crowd of Republican voters, one of whom received a severe saber-cut, and three were shot, whilst others were beaten with clubs. These facts are fully substantiated by the evidence. (Record, pp. 111, 113, 115, 119, and 122.)

It was claimed in the argument for the contestee that no notice of contest was given as to this poll, and possibly some others in this county;

but we are of the opinion that it is amply covered by the 4th and 15th specifications.

It is a curious and very contradictory fact that, whilst it is claimed and certified that 4,165 votes were polled and counted in this county, the census shows that there were only 3,828 males over twenty-one years. This, too, in the face of the testimony that a large number of voters were driven from the polls without voting. By the census, the white males twenty-one years old were only 1,381, whilst the vote certified for the contestee is 2,590, and this, too, when his friends and adherents were riding over the county on the night previous and on the day of election, uniformed and armed, threatening, beating, and shooting the colored people to prevent them from voting the Republican ticket. There is absolutely no testimony of colored men voting the Democratic ticket which will in any wise explain the statement. The only attempt at an organization of colored Democrats is shown in the testimony of George Bellinger (p. 557), in which he says the largest number ever answering were 22, and in his statement of the officers is Daniel Platts, as vice-president, who testifies (p. 412) that he did not vote that ticket and joined a Republican club, in which he remained during the campaign. The utter failure of the colored Democratic club is fully shown on page 416. Indeed, it would be most extraordinary if any number of colored people should vote the Democratic ticket, in view of the overwhelming testimony of the lawless violence of "the red-shirt Democracy," not only in this county but in four others of this district.

The only way by which such a statement of the vote of this county can be explained is by the method illustrated so well at Brunson's, as to the facts of which the Democratic manager and supervisor, as well as Republicans, testify. On the first count this box contained "something over 500"; the excess over the poll-list "was near 200" (see testimony of Democratic supervisor, p. 101), whilst the manager (Democratic) who drew them out says "that excess was about 232" (p. 100). And yet this box is certified to as containing 356 legal votes, and it is on such official statements that the contestee has received the certificate and now occupies a seat in the House as the Representative from this Congressional district.

References to testimony for

HAMPTON COUNTY.

Brunson:

- Hector Loadholts, p. 13.
- Aaron Smith, p. 14.
- Benjamin Halford, p. 89.
- Moses Terry, p. 95.
- Isaac Thompson, p. 99.
- E. B. Brabham, p. 414.

Early Branch:

- Moses Brown, p. 107.
- Baalem White, p. 414.

Beach Branch:

- Edmond Riley, p. 12.
- Wilson McTeer, p. 8.
- Frank Saxon, p. 5.
- William Wright, p. 7.

Lawtonville:

Ben. Shepperd, pp. 113 and 114.
Erasmus Black, p. 115.
Lucina Barnes, p. 119.
Albert Hunter, p. 122.

Varnsville:

S. J. Gantt, p. 125.
John A. Brown, p. 103.

BRUNSON'S—HAMPTON COUNTY.**Hector Loadholts (p. 13) testifies:**

Q. Why?—A. I came to Brunson with Small's ticket in my pocket, and intended to vote it if I could vote at all; but when I went into the house where some one told me the box was a crowd of white men met me with clubs in their hands. They took hold of me. They pulled and jerked me about, and they showed me a red ticket and told me that I must vote it. While they were reading the names on the ticket I got away from them and got out of there as I could and left for home.

Q. Why did you leave for home?—A. Because if I had staid there and not voted that ticket that they were reading to me they would have given me the very devil with those sticks they had, just like they did here in 1878.

Aaron Smith (p. 14) testifies:

Q. Why do you say it was worse than you ever saw?—A. Because, on the night before the election the Democrats gathered here (from God knows where) until there must have been hundreds of them here, and they hoop and hollowed and shot off guns and something that sounded like a cannon all night; they kept such a noise, and kept coming to Mr. Brabham's house and calling him and trying to get him out of his house, and kept threatening to break into his house, that none of us could sleep a wink that night.

Benjamin Halford (p. 89) testifies:

Q. Who had the Republican tickets on that day for distribution?—A. I had them. Q. Did you meet with any trouble in the distribution of your tickets? If so, state what.—A. I was standing in front of the house in which the ballot-box was, about five steps from the door, with about four hundred ballots in my hand. Mr. James Mulligan, one of the State's marshals, walked up to me and told me to give him those tickets I had. I refused to give them to him. He then said he was authorized to take them, and put his hand in my pocket to take them out. I put my hand in my pocket at the same time and caught the tickets and held them tightly. I told him that if he wanted to see them I would give him as many as he wanted; but he insisted that he must have them all, and kept pulling them and trying to tear them out of my hands. After he had torn the ends off some of them he held on to them and called to the men standing around to hand him a knife. Mr. J. Chisolm Youmans stepped up to him and handed him (Mr. Mulligan) a knife. After he (Mulligan) got the knife, he said: "Now I'll cut your d—d throat." I told him to cut it and then he could get the tickets. He then cut the tickets in two. I had hold of each end of the tickets, and he cut them in the middle between my hands. Dr. Wyman, a Democrat, who was standing near by and saw it all, said to Mr. Mulligan, "You have done that wrong. He offered you as many of the tickets as you wanted, and you should not have cut them." Mulligan then left me, and I said a few words about what he had done, and Mr. Chisolm Youmans ordered me to shut up, putting his hand in his pocket at the same time to pull out something, but the crowd rushed up to him and stopped him.

Q. What kind of tickets were those Mr. Mulligan cut up in your hands?—A. They were headed Union Republican ticket, and had Garfield on it for President of the United States, and Robert Smalls for Congress.

Moses Terry testifies (page 95):

Q. Who was distributing tickets on that day?—A. Ben Attwood.

Q. Were they Republican tickets?—A. They were; General Garfield for President and General Smalls for Congress.

Q. Was he the only one distributing tickets that day?—A. He was the only one distributing Republican tickets, and had there been any other distributing them I should have seen it.

Q. Was there any attempt made to take these tickets from him?—A. There was; Mr. Mulligan stepped up to him and asked him to let him see the tickets. Attwood told him he would give him as many as he wanted, but Mulligan said to him, "I have authority to take them all," and run his hand down in Attwood's pocket and drew out the tickets. As he did so Attwood caught the end of the tickets in his hand. He then called for a knife, and Chisolm Yoemans gave him a knife, and he cut them in two; that is, Mulligan cut them in two, and said to Attwood, "If you don't mind I will cut your throat." So Attwood left him at that.

Isaac Thompson (page 99) testifies:

Q. Who was it that objected to your voting?—A. Chisolm Youman and John Lightsey and Mr. William Causey, who struck me three times and shoved me out the house.

Q. Did you vote that day?—A. No, sir; I did not vote that day. I wanted to vote the Republican ticket, and said that if I could not vote the ticket I wanted to I would not vote at all. About twenty said to me that if I would vote their ticket I could vote.

E. B. Brabham (p. 414), testifies:

Q. Where were you on the 2d day of November last?—A. At Brunson election poll; acted as United States supervisor of election.

Q. Was the election quiet and orderly?—A. It was not. On the evening previous to the day of election several crowds of mounted red-shirters rode into the town of Brunson. Directly after dark they gathered around the depot of the Port Royal and Augusta Railway. They whooped and yelled. Hurrahed for Hancock, and cursed Garfield. They fired off guns and exploded powder under an anvil, which explosion sounded like a cannon, and was heard many miles from here. They kept up this shooting all night, and until near sunrise the next morning. I went to the poll at about daylight, and found a great many Democrats there, many of whom seemed to be under the influence of whisky, and seeming to have taken charge of the poll. It seemed to be the purpose of the Democrats to make as much show of violence as possible, but not to hurt any one; but when they got their men drunk for the purpose, they could not control them. They knew that the Republicans, having been run over with horses, beaten with sticks, and shot with pistols at this poll on election day in 1878, would be afraid to come to the poll if there was any disturbance about it. They kept threatening to come to my house, which is about one hundred and fifty or two hundred yards from the depot, "and break in on me." A prominent Democrat sent a colored man to my house with a message to me, saying that I had better go away from home; that those men at the depot had just agreed to come to my house after me, and that if they found me there they would injure or kill me. Two other Democrats came to my house, a few minutes after, and advised me to leave. I told them that I would go, but my family was here. I had nowhere to take them, and would stay with them if I got killed. Shortly after this a crowd came; called to my gate, and said that they wanted to see me. I refused to go out, and they left. A few minutes later another crowd came. They came in my yard, and knocked at my bedroom window, insisting that I should get up, that they wanted to see me. I refused to get up. They talked to each other awhile, and left. I heard one say, "Let's go in"; another said "No." After the poll opened the Democrats whom I found there early in the morning kept up a good deal of noise, appearing to be drunk, and behaved very disorderly.

The poll was held in the back room of an old store. The voters had to pass through this old store to get to poll. This old store was full of this disorderly crowd of Democrats nearly all day. No voter was allowed to enter without their consent. Whenever a Republican would appear to the door for entrance, they would crowd into the door, yell and jeer at him, and very often they would hold sticks across the door and would not allow the Republicans to enter. In several instances Capt. John H. Lightsey had to order the door cleared before the Republicans could get in. These blocking the door were mostly by members of Captain Lightsey's red-shirt cavalry company. Captain Lightsey testifies that he came to the poll directly after midnight, and I think he brought his company with him.

After the Republican voter got into the room the Democrats would ask him all sorts of questions, thereby detaining him, worrying him so that several turned and went out and did not vote at all. I noticed one Republican who tried to press through and get to speak to the managers. As he got to the box several Democrats caught and tried to pull him back; he held on to something and they commenced beating him on his head with clubs, and he turned and ran out. They would not allow more than one Republican to enter at the time, and it required considerable nerve to go into the poll under the circumstances. Several Republicans turned back at the door, and some who entered was so worried that they came out before they got a chance to vote, and never returned.

Q. Was the election fair?—A. It was not; it was as unfair as it could possibly be.

The commissioners and managers of election were all Democrats. I, as chairman of the Republican party, applied to the county election commissioner for one Republicans on each board of three managers, but did not get one appointed. The Democrats voted two and more tickets folded together, thereby stuffing the box so that a very large excess had to be drawn out and destroyed, which gave them a chance to destroy nearly all the Republican ballots. After throwing out all the ballots that they were certain had been voted inside other ballots, they had 588 ballots against 350 names on the poll-list.

Q. George Bellinger has testified that he was president of a colored Democratic club of 107 members; is that true?—A. No.

Q. What means have you, if any, for knowing it not to be true?—A. There never was but one colored Democrat club organized in Hampton County; that club broke up during the campaign of '78. George Bellinger tried to revive it in 1880, but failed. I am an eye-witness to his efforts and failure. He held a meeting to elect officers and to elect delegates to the Democratic county convention. The officers he elected would not serve. Some of the delegates he had elected would not attend the convention. They had joined a Republican club.

This precinct your committee are of opinion should be rejected.

EARLY BRANCH.

Moses Brown (p. 107) testifies:

Q. Where were you at the day of election?—A. Was at Early Branch poll.

Q. Was you there all day?—A. Yes, sir; was there all day.

Q. Did you see a body of men riding up to the polls that day?—A. Yes, sir; I suppose some twenty-five men would come riding up on their horses that day, firing their pistols off; when they came up they would ride around awhile firing off their pistols, and then they got down and voted; after that some of them remained and some got on their horses firing their pistols, and went off as if they were going to Peeples poll again.

Q. Did they come from the direction of Peeples polls?—A. Yes; came from right that side.

Q. How far is Peeples' to Early Branch?—A. I suppose, from my judgment, it is about three and a half miles.

Q. Can you give the names of any of those who came in this body?—A. Yes; can give the names of some of them; there was Robert Nixon, Oliver Nixon, Miles Nixon, Rube Nixon, Ed. Nixon, Willy Taylor, Mark Nettles, Bill Bruler, Tom Gregory, Eugene Gregory, Bill Allen (colored fellow), Guinney Wilcox, Branford Bruler, and I believe that is about all I did see.

Q. What ticket did they vote?—A. They voted the Democratic ticket every bit.

Cross-examination:

The Democratic tickets were red and the Republican was white, and they had the red ticket.

Q. Then you was standing near the poll all day?—A. Yes; I was standing right by the window all day.

Q. How was it then that you saw the difficulty with this colored and these white men?—A. The difficulty was not more than five steps from the window.

Q. Were all the Republicans driven away before the votes were counted?—A. Of course; they had to go away or be beaten with clubs.

Q. Did you remain until the votes were counted?—A. No; I had to leave. A white man came to me and told me I had better leave.

Q. What time did you leave?—A. About 7 o'clock.

Q. Who was it that told you you had better leave?—A. Mark Nettles, a white man and a Democrat.

Q. Where did you go?—A. I went home.

Baalem White (p. 414):

Q. Did you vote?—A. I did not.

Q. Why?—A. When I got there about half past ten a. m., I saw but few people; but shortly I saw a crowd of twenty-five or thirty white men on horses coming. Mr. Elias McTeer came up and handed me a ticket to vote, and I opened it and found that there was three tickets folded together. When he handed me the ticket he started to the box and told me to "Come right on and vote," and when he looked back, I had the tickets open. He then asked me if I had no better sense than that. I told him that I had opened the ticket to see if it suited me. It seemed that he did not like it for me to open the ticket. I had always been voting the Democratic ticket; but went

there that day to vote the straight Republican ticket; but when I saw that I would create so much ill-feeling by it I would not vote at all.

The vote at this precinct should be rejected.

BEACH BRANCH.

Edmund Riley (p. 12) testifies :

Q. Did you get any tickets that day?—A. We went to Mr. Brabham, at Brunson, for tickets; he gave us some tickets, but when we got about half way from Brunson to Beach Branch a crowd of Democrats, who followed us from Brunson, overtook us and took the tickets from us.

Q. How did they take the tickets from you?—A. They rode up to us, and ordered us to halt; they pointed pistols at us, and told us that we must give up those tickets.

Q. Did they threaten to do anything to you if you did not give them up?—A. They said they would blow our damned brains out if we did not give them.

Q. Did you give them up?—A. We had to allow them to take the tickets, because there were nine of them, and every one of them had pistols and sticks, and there were but four of us, and not one of us had a pistol or stick or any other weapon.

Q. What did you do after the tickets were taken from you?—A. We went on to Beach Branch, staid there a while, and went away.

Q. Do all the colored men in your neighborhood belong to your club?—A. I think there is four or five who do not belong to our club.

Q. Did any colored men vote the Democratic ticket at Beach Branch?—A. Yes; but very few; less than ever have before. The colored men were never more united than they were in this election, and I never saw anybody so badly cheated and defrauded as we have been in this election.

Q. Why were you so united in this election?—A. We were determined that Garfield and Smalls should be elected if it lay in our power to do it.

Wilson McTeer (p. 8) testifies :

Q. What did you do when you got to the poll?—A. We waited till about 7 o'clock, and when we found that there were no Republican tickets there Frank Saxon, the president of our club, directed me to take three other men with me and go to Brunson in a hurry and tell Mr. Brabham, the Republican county chairman, to send him some tickets. I took Govan Brooks, Toney Moss, and Edmund Riley, and we went to Brunson and got a package of about 1,200 tickets from Mr. Brabham and started back to Beach Branch. We rode very fast. When we had got about three miles from Brunson, and at what is known as the Hammock place, John Glover, a Democrat, overtook us, and ran his horse by us and turned the horse across the road ahead of us and said "close up." Then eight other Democrats rode up to us with sticks and pistols in their hands and said, "Halt, you sons of bitches, and give us those tickets. If you don't give them up we will blow your d---d brains out."

Q. Did you give the tickets up?—A. I did not have the tickets myself, but they seized hold on me, and was searching my pockets for the tickets. While they were searching me for the tickets, one of them said, "There is the son-of-a-bitch that has them." Then they went to Govan Brooks. One of them held a pistol to his breast and one held a club over his head while others put their hands into his pockets and took the tickets out.

Q. How were those Democrats dressed?—A. They were all dressed in red shirts except one, who wore a red bow.

Q. What did they say after they had taken the tickets?—A. They told us to go and not let them catch us back that way again, or they would kill us.

Q. Do you know who those Democrats were?—A. Yes, some of them.

Q. Give me the names of those you know.—A. Perry Lynes, John Glover, Billy Bronson, and Thad. Bronson.

Frank Saxon testifies (p. 5) as follows :

Q. Was the election peaceful and quiet?—A. No.

Q. Was you allowed to discharge your duty as supervisor peacefully and quietly, without hindrance or obstruction?—A. No.

Q. State in what manner, then, you were prevented from doing so.—A. The managers of the election refused to allow me to act as supervisor without going first to a trial justice and be sworn.

Q. Had you been sworn; and, if so, before whom?—A. Yes; before E. A. Brabham.

Q. And you say you did not act as supervisor?—A. No.

Q. Did you go into the house where the poll was kept?—A. Yes. But when I told

them that I had been sworn already, and that I would not go to the trial justice to be sworn again they ordered me out of the house.

Q. Did you make any attempt to remain in the building?—A. Yes; I did not go out until I saw that they were going to put me out by force.

Q. Who were the managers of election?—A. Richard Johnson, John Griner, and Dr. W. T. Breland.

Q. How did you know that they would put you out?—A. They said they would do it if I did not go out. Mr. Johnson said that if I was allowed to act as supervisor he would not act as manager, and they stopped the election, and seemed to be in the act of preparing to put me out. I was afraid that if I did not go out they would hurt me.

William Wright (p. 7) testifies:

Q. Did they both remain at the box?—A. The Democratic supervisor did, but the Republican supervisor did not.

Q. Why did not the Republican supervisor remain at the box?—A. Because the managers of the election would not allow him to remain.

Q. What did the managers say to him?—A. They asked the Republican supervisor to show his authority. He did so. Then they asked him if he had been sworn. He told them that he had. They asked him who swore him. He told them that Mr. Brabham had sworn him. Then they said that he must go to Mr. Fitts, and be sworn again.

Q. How far does Mr. Fitts live from the poll?—A. Two or three miles.

Q. Did the Republican supervisor go to be sworn again?—A. No.

Q. What did they do then?—A. They told him that he must get out of the house.

Q. What else did they say?—A. Dr. Breland said that the Republican supervisor's commission was all right, but Mr. Griner and Mr. Johnson said that it was not, and that he should not sit in the house.

Q. Do you think that the managers would have done anything to the supervisor if he had not gone out?—A. Yes.

Q. Why do you think so?—A. Because they had stopped everything and folded up their papers and started to put him out.

Q. Were the managers Democrats or were they Republicans?—A. They were all white Democrats.

For the violence and intimidation shown at this poll, whereby Republican voters were prevented from counting their ballots, and for the refusal to permit the supervisor to discharge his duties, your committee are of opinion that this poll should be rejected.

LAWTONVILLE.

Ben Shepperd (page 113) testifies as follows:

Q. Where were you at the last election?—A. Was at the Lawtonville precinct.

Q. Was it a quiet election that day?—A. No, sir; they commenced a row there I suppose, near as I can come at it, about 8 o'clock a. m.; they kept quiet down for awhile for about one and one-half hour, then started row again; then things went on until about 4 o'clock p. m., when they started it again. They threatened to fight the Republican party for voting; they rebuked us by every blaspheming they could think of; they were armed, every Democrat; most that I seen had from one to two pistols; then, in the evening, at 4 o'clock, they rid off a piece and came back and rid right in among the Republican party with swords and clubs; then we tried to get out of the way, and in trying to get out of the way shot among us. I myself got six balls in me at that time, and another man, named Adam Patterson, got shot. He and I were carried home in a wagon together.

Q. Did you see any one cut or struck?—A. Yes; I saw one man get cut with a sword, and two got struck with a club.

Q. When they shot at you what did they say?—A. When they shot me I was getting away.

Q. What did they say when they came up?—A. As they came up they said, "You God damned son-of-a-bitch," and struck a man standing behind me; at that time I got behind a tree; we, the Republican party, were all peaceable and quiet at the time.

Q. Were you all quiet through the day?—A. Yes, we were all quiet through the day.

Q. Where was the polls kept?—A. In Mr. Peeples's store, in the upper story. We had to go up staircase from outside.

Q. Was the box inside of building?—A. The box was right at the door.

He further testifies, on page 114:

Q. How long have you lived there?—A. Was born and raised there.

Q. Where were you at the last election?—A. Was at the Lawtonville precinct.

Q. Was it a quiet election that day?—A. No, sir; they commenced a row there I suppose, near as I can come at it, about 8 o'clock a.m.; they kept quiet down for awhile, for about one and one-half hour, then started row again; then things went on until about 4 o'clock p.m., when they started it again. They threatened to fight the Republican party for voting; they rebuked us by every blaspheming they could think of; they were armed, every Democrat; most that I seen had from one to two pistols; then in the evening, at 4 o'clock, they rid off a piece and came back and rid right in among the Republican party with swords and clubs; then we tried to get out of the way, and in trying to get out of the way shot among us. I myself got six balls in me at that time, and another man, named Adam Patterson, got shot. He and I were carried home in a wagon together.

Erasumus Black (p. 115) testifies:

Q. State then what occurred there to prevent it from being peaceful.—A. That morning when we went there the Democrats started a row to keep us from voting, by threatening and cursing us for d—d sons of bitches, and said they come to kill us out that day, and that they were going to fill up a ditch with us. The rows continued until 4 o'clock that evening; and then the shooting began. They cut us with swords and beat us with clubs. One cut me in the head with a sword. Then we ran and they shot us with pistols and guns.

Q. Do you know of any persons being shot on that day?—A. Yes. Ben Sheppard, Adam Patterson, Archey Taylor.

Q. Do you know the name of that supervisor?—A. Edmund Glover.

Q. Do you know whether or not he remained in the room all day, from 6 o'clock a.m., till 6 o'clock p.m.?—A. No; he remained there till the row commenced—4 o'clock in the evening.

Q. Do you know whether or not he returned after coming out of the room at 4 o'clock?—A. No. I saw two of the Democrats leading him down. The Democrats were dressed in red shirts. I saw them leading him down the steps.

Q. How do you know that he did not return?—A. After they led him down the steps he went across the field and took to the swamps to save his life.

Cross-examined:

Q. What was the names of the two Democrats that were leading Glover down?—A. I don't know them.

Q. Why did you take them to be Democrats?—A. Because they were white men, and dressed in red shirts.

Q. Did they have hold of Glover?—A. One on each arm.

Q. Were they violent towards him while they were leading?—A. Yes; they seemed to be forcing him down the steps.

Q. Did you see any of them strike Glover?—A. No.

Q. Why, then, did you say that he ran for his life across the swamp?—A. Because they were cursing him all day, and if he had not run they would have shot him like they did us.

Lucius Barnes (p. 119) testifies on cross-examination as follows:

Q. Don't you know Glover got scared and left of his own accord?—A. I don't think Glover left of his own accord, I know he would not.

Q. Were those men who were leading him down using any violence?—A. Did not see them use violence, *heard them tell him to escape for his life*.

Q. State what occurred at the Lawtonville precinct that day.—A. When we were going to the poll that morning they commenced cursing us, sons of bitches, saying what they were going to do with us that day, and after that the Democrats made a line to be divided; said we must stay on one side and the Democrats on the other, and we done so rather than have any fuss, but the Democrats would keep coming over on our side and keep cussing us, and knocked some of the men, and told us if we didn't leave there they were going to play hell with us that day; so we never left right off, but made up a little fire and stood around there until about 4 o'clock, and then, rather the horse cavalry, went up the road and came back, and commenced knocking and shooting and cutting, and stabbed me in the temple with a sword, and then we had to leff. They told us if we did not leff they would kill us. Adam Patterson was one that got shot, and Archie Taylor and Benjamin Sheppard got shot.

Albert Hunter (p. 122) testifies:

Q. Did you vote?—A. Yes.

Q. Tell us what kind of a row it was that was raised at 4 o'clock in the afternoon?—
A. We were sitting around a fire. Two men went in the rear of us to a graveyard. About fifty men went down the road on horses. Two came opposite us where we were sitting at the fire. The two that went to the graveyard then commenced shooting. By the time they started to shoot the horsemen came back. When they got back they charged in on us, and tried to run over us with their horses, knocking us with clubs, chopping us with swords, until they got us scattered from around the trees. When they got us scattered from around the trees and we commenced to run they commenced to shoot us.

Q. How many men got shot?—A. Three that I know of.

Q. Do you know the names of these three men?—A. Ben Sheppard, Adam Patterson, and Archer Taylor.

Q. When you got up to vote did you see any Republicans in the room where the voting was going on?—A. None but the supervisor.

Q. Did that supervisor remain in that room until the votes were counted that night?—
A. No; he was there until the fuss commenced.

Q. Did you see anything of him during this fuss?—A. I saw two white men lead him down the road.

Q. Have you seen anything of him since?—A. No.

Q. Did any one attempt to prevent you from voting when you went up to vote?—
A. No.

Q. Is not Lawtonville a large Republican settlement?—A. It is a large Republican settlement.

Q. How many Republican clubs in that settlement that go to Lawtonville to vote?—
A. Two.

Q. Do you know of any threats or any shooting of guns by the Democratic party in the night previous to the election?—A. They said when they passed my house that they were going on to Lawtonville, and that d—d Republicans could come on there: *that they were going to fill up a ditch with them.*

Q. Was there any shooting of guns?—A. Yes; they were shooting guns and pistols along the road and hollering all the time.

From the testimony at the pages referred to it will be seen that by reason of this violence a large number of Republicans were not permitted to vote at this poll; that the poll was largely Republican had they been permitted to vote; that the Republicans were organized in clubs and were there to vote, and because of violence and intimidation, and because of the fact that the supervisor was driven away and prevented from discharging his duties, your committee are of opinion that his poll should be rejected.

VARNSVILLE.

It is claimed that this poll is not included in the notice of contest, but it seems to be amply covered by specifications 4th, 5th, 15th, and 16th.

This box contained 817 ballots, which was an excess of 229 ballots over the number of names on the poll-list. There were drawn out 160 Republican tickets and 69 Democratic tickets, and the poll is stated as 159 Democratic votes and 129 Republican. Over 80 Democratic and two Republican tickets were found to contain an extra ticket.

There is no means of ascertaining the true vote at this poll. It is certain that the official return is utterly unreliable, and on the following testimony your committee are clearly of the opinion that the poll should be excluded.

VARNSVILLE, HAMPTON COUNTY.

S. J. Gantt, supervisor (p. 123), testifies:

Q. Did you remain there during the day?—A. I remained there during the day till the vote was done counted.

Q. Do you know the number of votes said to have been cast there that day?—A. By my memory, I think the whole number of votes cast was 500 and odd.

Q. Do you remember the number of names on the poll-list kept by the managers?—

A. I am not sure, but I think the number of names on the poll-list was also 500 and odd.

Q. Was there any more ballots cast than there were names on the poll-list?—A. Yes, sir.

Q. Do you remember how many more ballots cast than there were names on the poll-list?—A. There were either *two hundred and twenty-nine* or *two hundred and thirty* more ballots than there were names on the poll-list.

Q. Did you see the ballots that were in excess of the poll-list drawn out?—A. Yes, sir; I did.

Q. What was done with these ballots when they were drawn out?—A. They were thrown in the fire, but I saw them before they were thrown in the fire.

Q. Do you remember the number of ballots that were drawn out from the excess that were Republican?—A. I remember there was (160) *one hundred and sixty Republican ballots out of the two hundred and twenty-nine or two hundred and thirty*.

Q. Do you remember the number of *Democratic ballots* that were found with one or more folded with the same?—A. *Eighty or eighty-eight*.

Q. How many *Republican* ballots were found with more than one folded within the same?—A. There were *two* only.

Q. Was there any difference between the Democratic and the Republican ballots?—A. There was a *right smart* difference.

Q. Please state the difference.—A. The color of the Republican ballot was white, and the Democrat ballot was red. The Democratic ballot was more *finer and thinner*; they could be distinguished in the *dark in the night* by the difference.

Cross-examination :

Q. Were not the excess of ballots from box without seeing them?—A. The one who was counting them, taking them out, never looked at them.

Q. Were not these ballots, on being taken out, thrown immediately in the fire?—A. They were thrown in the fireplace, and *one of the managers told to me* to throw them in the fire. I did not throw them in one by one, some I threw in singly; others were in a pile; a pile here and a pile there.

Q. How, then, do you know the exact number of Republican ballots that were thrown out?—A. *I know, as I counted them as they were drawn out.*

Jno. A. Brown (p. 103) testified as follows:

Q. Were any of the Democratic or Republican voters at the polls armed?—A. I saw some of the Democrats armed with pistols, but don't know their names.

Q. How were these men dressed?—A. They had on red shirts.

Q. All of the Democrats have on red shirts or part of them?—A. Only about twenty-five had them on, I think.

Q. Were any threats of violence made by these men that were armed with pistols and had on red shirts, made?—A. Yes, sir; by one.

Q. If you know the man's name state it, and what he did.—A. I do not personally know his name; only saw him walk up and ask this young man if he intended voting, and the young man said yes. He then asked him what way he intended voting, as he was objected to already. The man said he intended voting the Republican ticket; then this Democrat said, "*If you intend voting for Robert Smalls you can't vote here to-day, but if you vote for Tillman you can vote.*" The colored man told him before he would vote for Tillman he would die and go to hell. Then the row started. Whilst the row was about to start, the Democratic marshal called on Mr. Gantt, the Republican supervisor, to stop the row.

Q. Who started this row?—A. The white man. The white man said he belonged to Captain Lightsey's company; had been down on Monday before the election to kill a parcel of you Almeda Republicans, and to-day they intended to have a row out of us and finish them.

HAMPTON COUNTY—CORRECTED VOTE OF CONTESTEE.

| | |
|--------------------------|---------|
| The vote is stated..... | 2,590 |
| Deduct Brunson..... | 336 |
| Deduct Early Branch..... | 316 |
| Deduct Beech Branch..... | 120 |
| Deduct Lawtonville..... | 340 |
| Deduct Barnesville..... | 459 |
| | — 1,571 |
| | — 1,019 |
| Contestant..... | — 1,575 |

| | |
|-------------------------|--------|
| duct Brunson | 19 |
| duct Early Branch | 87 |
| duct Beech Branch | |
| duct Lawtonville | 174 |
| duct Barnesville | 129 |
| | — 409 |
| | 1, 166 |
| all's majority | 147 |

BARNWELL COUNTY.

It is objected on behalf of the contestee that there is no notice of contest as to Barnwell precinct, in the county of Barnwell, but it seemed to be amply covered by the 7th, 15th, and 16th specifications of the notice of contest.

It is immaterial, however, for though the testimony shows that a party of mounted Democrats were shooting around the polls and behaving in such a manner as to frighten off some Republicans, the complaint as to this box is not proven.

ALLENDALE.

The following cross-examination of William Green (page 34) is a fair statement of the evidence as to the violence at Allendale :

- Q. When did you make your first attempt to vote ?—A. About 12 o'clock.
 Q. Why did you wait till then ?—A. Mr. Rivers asked us to wait till then, so the Democrats could vote first.
 Q. Was it agreed then that the Democrats should vote in the morning and the Republicans in the afternoon ?—A. Yes.
 Q. How many Democrats had voted till 12 o'clock ?—A. Don't know; they voted all day. They promised to give us time to vote, but they did not do it.
 Q. Are you well acquainted with the Democrats you saw with pistols ?—A. I was, through two of them.
 Q. Is it their habit to carry pistols ?—A. Yes.
 Q. Did they carry clubs or walking-sticks ?—A. The clubs were too large for walking-sticks.
 Q. What time did the Republicans leave the poll ?—A. About 6 p. m.
 Q. When the Republicans came up to vote did they come in a body ?—A. Yes; Mr. Rivers called them up and said that there was room for them to vote, but the Democrats on the piazza would not permit them to enter.
 Q. Did the Democrats say that you could vote after 12 o'clock ?—A. Mr. Rivers told us to wait on them until then.
 Q. At 12 o'clock did any Republicans push their way in ?—A. Yes; but they were knocked down and beaten by the Democrats.

It is fully corroborated by other witnesses, at pages 31, 32, 33, and 34. The following is from the testimony of the supervisor, Lewis Rivers (page 62) :

- Q. What time did you get to the poll ?—A. At 6 o'clock. I saw the box opened.
 Q. Where was the poll held, and how was it situated ?—A. It was in an old store house, the counter, near the rear door, the voters going in and out the front; the box was about thirty or forty feet from the front door.
 Q. Did the voters have free access to the poll ?—A. The Democratic party kept a guard at the door, obstructing the front door, and compelled colored men to show their tickets, and when it was found they had Republican tickets they would close the door and prevent them from entering.
 Q. Did you keep a poll-list ?—A. I started to keep one, but saw that it was impossible to keep one correctly, and stopped about 1 p. m.
 Q. Did the managers give you every facility to discharge your duty ?—A. They did. The reason I was unable to keep a correct poll-list was because the Republicans were prevented from coming into the poll to vote, and I was compelled to leave the box in order to try and make a way for the Republicans to get in. I could not attend to this and keep a poll-list at the same time. When I went to the door and asked that the

way be cleared it was done, but as soon as I returned to the box, the passage was closed again; it was the same as before. This continued until about 1 o'clock, when the Republicans went away towards Barker's Mill precinct, as they could not get into the poll at Allendale. They returned to Allendale about 3 or 4 o'clock and said that they had been to Barker's Mill and could not vote there.

The same process of obstructing the poll was continued all day.

Q. How many Republicans voted at Allendale that day?—A. Thirty-six Republican votes were counted and over seven hundred Democratic.

Q. Do these figures represent one vote for each voter at that precinct?—A. I don't think they did. I noticed, in counting the votes, several ballots were folded together. I don't think that 700 Democrats voted there.

Q. Were you asked to sign a poll-list and return that night?—A. I was, by the Democrats, but refused. Quite a number of Democrats came to my house, about 1 o'clock that night, and demanded that I should get up and sign the list. I refused. They cursed and threatened to break down my door. I still refused. They shot around the house, alarming my family. The next night they did the same thing. I concluded it best for my safety to leave and stay away for a while. I remained away for several weeks.

Q. How many Republicans were prevented from voting there?—A. Between three and four hundred, who would have voted for Robert Smalls.

Charles Blake testifies (p. 31) as follows:

Q. Did you vote?—A. No. I went with the intention to vote the Republican ticket with Robert Smalls on it for Congress. When I got to the door the place was crowded with Democrats: they asked me how I wanted to vote; I told them the Republican ticket; they shoved us off the platform, and said, "You can't vote that ticket here to-day."

Q. Did you vote at all that day?—A. I did not.

Q. Who shoved you off the platform?—A. The crowd of Democrats that were on the platform.

Q. Were you unable to get to the ballot-box?—A. I was.

Q. Were there any other Republicans prevented from voting?—A. There were two hundred and forty-six in my club, and about two hundred and fifty more, who were prevented from voting there that day.

Q. Did the managers open the ballot-box?—A. I do not know.

Q. Where was the poll held?—A. In Fitt's old store; inside.

Q. Did you at any time see the ballot-box?—A. No; I could not get close enough to see it.

Q. Were there many Democrats present?—A. Yes.

Q. Were they armed?—A. I saw a few arms.

Cross-examined by Mr. HOLMES:

Q. How many persons went with you to Allendale?—A. Two hundred and forty-six.

Q. How did you go?—A. We just walked along together.

Q. Were they Republicans or Democrats?—A. Republicans.

Q. Were any of them armed with guns, pistols, or clubs?—A. No.

Q. How many persons were there when you reached the poll?—A. A large number.

Q. Were they Democrats or Republicans?—A. Both; but mostly Republicans.

Q. Were any persons on the piazza of the store where the box was at that time?—

A. Yes; the piazza was filled with Democrats.

Q. Were any of the Republicans in uniform?—A. No; not one.

Q. How many Republicans were thrown off the platform by Democrats?—A. A good many. I saw eight.

Q. Were they thrown off because they were Republicans?—A. Yes; the Democrats, they did it for that reason.

Q. How many Democrats were thrown off by Republicans?—A. Not one.

Q. How large was this piazza?—A. About 15 by 6 or 8 feet wide.

Q. Where were the Democrats stationed who kept the Republicans back?—A. Around the piazza.

Q. Did any Democrat threaten to injure you?—A. One Democrat drew his pistol on a crowd of us.

Q. How many colored Democrats are there in Allendale?—A. Only one that I know of.

Jeffrey Frost testifies (p. 33) as follows:

Q. Did you vote?—A. No; I could not get to the poll. I went to the poll two or three times, and the Democrats asked me how I intended to vote. I told them I wanted to vote the Republican ticket, and they said that I could not vote that ticket there that day, and shoved me off the piazza.

Q. How many other Republicans were prevented from voting in the same way?—
A. About three hundred that I know of.

A. Were there many Democrats on and around the piazza?—A. Yes; a crowd of them.

Q. If the Republicans had persisted in trying to vote do you think there would have been trouble?—A. Yes.

Cross-examination by Mr. HOLMES:

Q. Why do you think there would have been trouble?—A. Because those who did go through the door the Democrats spat upon and kicked them.

Charles Gardener (p. 33) testifies as follows:

Q. Did you vote?—A. I tried to vote, and the Democrats asked me what ticket I wanted to vote, and when I told them I was going to vote for Garfield and Small, they said I could not vote that ticket. They tried to get me to give them my ticket. I would not, and they shoved me off the platform.

Q. About how many were with you wanting to vote same ticket?—A. I tried to vote twice; about two hundred and fifty.

William Green (p. 34) testifies as follows:

Q. Did you go to Allendale on the day of the election to vote?—A. I did, but did not vote, because the Democrats stood in the piazza and would not let us in. I distributed about 300 tickets, and went on the piazza to vote. I was thrown off, and some who went with me were beaten and thrown off. I tried about half a dozen times to vote and was violently ejected each time by Democrats who had pistols and clubs in their hands.

Q. Did you see any Democrats with pistols and clubs?—A. I saw about half a dozen at the door with pistols. I know the names of three of them.

Cross-examined by Mr. HOLMES:

Q. When did you make your first attempt to vote?—A. About 12 o'clock.

Q. Why did you wait till then?—A. Mr. Rivers asked us to wait till then so the Democrats could vote first.

Q. Was it agreed then that the Democrats should vote in the morning and the Republicans in the afternoon?—A. Yes.

Q. How many Democrats had voted till 12 o'clock?—A. Don't know; they voted all day. They promised to give us time to vote, but they did not do it.

Q. Are you well acquainted with the Democrats you saw with pistols?—A. I was with two of them.

Q. Is it their habit to carry pistols?—A. Yes.

Q. Did they carry clubs or walking sticks?—A. The clubs were too large for walking-sticks.

Q. What time did the Republicans leave the poll?—A. About 6 p. m.

Q. When the Republicans came up to vote did they come in a body?—A. Yes; Mr. Rivers called them up, and said that there was room for them to vote; but the Democrats on the piazza would not permit them to enter.

Q. Did the Democrats say that you could vote after 12 o'clock?—A. Mr. Rivers told us to wait on them until then.

Q. At 12 o'clock did any Republicans push their way in?—A. Yes; but they were knocked down and beaten by the Democrats.

Upon this testimony this poll must be rejected.

In this county the governor appointed Gilbert Hogg as a Republican upon the board of election commissioners, and he testifies at page 64 that the first notice of a meeting which he received was to meet on the "day of election at Barnwell."

Then, of course, the other two members of the board had appointed all of the managers, and every manager and clerk was of the contestee's political party, and the testimony as to their conduct indicates that many of them were not only partisans but very unscrupulous ones. On page 65 Hogg testifies:

Q. Did the Republicans ask for the appointment of managers to represent them at any of the polls in this county?—A. Mr. Nix, the Republican county chairman, asked for the appointment of one manager at each poll, and gave me a list of names who were recommended. None of them were appointed.

Q. You met with the commissioners as a board of canvassers after the election?—A. Yes.

Q. Was there any conversation in the board about the number of votes that had been cast in Barnwell County?—A. There was. It was said by the commissioners that there were more votes cast than there were voters in the county. The clerk wanted to know what was to be done about it. I asked what was to be done about it, and it was decided that we should count the votes as returned, and that it was not our fault that there was an excess. There were some mistakes in the poll-list, and the commissioners said that they could not fix it. I don't remember what was the excess of the votes of the county, but it was two thousand or more.

The votes claimed for the contestee in this county are 5,422, yet by the census taken the same year there are only 3,131 white males 21 years old in the county, so that to have gotten this vote the contestee must have received the vote of every white male over 21 years of age in the county, and of 2,391 colored voters in addition. Besides the very great improbability that a very considerable number of colored people voted for the contestee is the fact that the whole vote as certified is 7,867, and it is proven that 1,148 Republicans were prevented from voting, making 9,015, and the census shows only a total of males over 21 years of age of 7,906.

The spirit of the election is illustrated by a few extracts of the testimony. At page 21 is the following from A. J. Singleton:

Q. Were these men who were prevented from voting Democrats or Republicans?—A. All who I saw rejected attempted to vote the Republican ticket, with Smalls on it for Congress.

Q. Do you know of any violence or intimidation at or before the election against the Republicans?—A. There was riding up and down in the neighborhood by the Democrats several nights before the election, beginning on Thursday, continuing Friday and Saturday night, who were shooting, cursing, and making a great deal of noise.

William Fogler (p. 22) testifies:

Q. Tell us about the entrance to the poll.—A. A railing was erected in front of the door about 10 feet high. The guards kept the people outside of that rail, the object being to keep the voters out—Republican voters.

Q. Did the managers or clerk have on red shirts?—A. They all had on red shirts.

Q. Was there any intimidation or violence before the election?—A. There was. The Democrats was riding and shooting from about three nights before the election until the election.

C. H. Hopkins (p. 24) testifies:

A. Yes; it was general. Saturday before the election they came to my house, and discharged their guns and pistols. This was about 3 a. m. They went through that section shooting, &c., three nights before the election; they went to Alex. Gill's house, who was vice-president of our club, and left a coffin cut from a paste-board box, and wrote on it: "Alex. Gill: If you don't quit your ways and join the Democracy you shall be in the clay in a few days."

Q. Why did they go to your house?—A. I am the president of the club and precinct chairman.

Q. If the vote had been counted as cast would that poll have gone Republican?—A. It would have gone Republican. C. F. Calhoun, one of the Democratic managers, said to me during the day of election that "you are giving us the devil in voting, but we will give you the devil in the count."

Silas Caves testifies (p. 20) as follows:

Q. Did you vote?—A. No.

Q. Who did you intend to vote for for Congress?—A. General Robert Smalls.

Q. Why did you not vote?—A. There were so many Democrats present, uniformed in red shirts and armed with pistols and sticks, and acting in such a threatening manner, and crowded the entrance to the polling places that it was impossible for us to vote. I went away with the crowd of Republicans, numbering about three hundred and fifty, who like myself were unable, through threats and fear, to vote the Republican ticket.

Q. Did any Democrats threaten the voters at this poll?—A. I heard quite a number who were on the steps blocking the way to the polls say, "By God, you sha'n't vote unless you vote the Democratic ticket, as we are voting." Some of the red-shirts were preventing the Republicans from coming within the yard of the house in which the poll was, saying that "they'd be d---d if niggers should vote there."

Q. Do you know of any intimidation before the election?—A. It was a common thing, a short time before the election, for the Democrats to ride up and down at night, making the night hideous with noises and curses to intimidate the Republicans of the county. During the week prior to the election they visited my house twice. The first time I was not at home. The second time they came I left my house and took to the woods, fearing they would kill me because of my politics. They fired pistols nightly for the purpose of striking fear in the hearts of the colored people. All the Republicans were terrorized, they never having heard or seen such things before.

The vote of Barnwell is stated :

| | Contestee. | Contestant. |
|---|------------|-------------|
| Deduct Allendale..... | 5, 422 | 2, 445 |
| Deduct votes illegally drawn, Ferril's Store..... | 700 | 36 |
| | <hr/> | <hr/> |
| | 4, 700 | 2, 409 |
| Add vote not counted, Ferril's Store..... | | 22 |
| | <hr/> | <hr/> |
| | 2, 431 | |

These are the only changes in the official statement of the vote in this county which your committee recommend, but they desire to call especial attention to the following extracts from the testimony for the purpose of showing the spirit and mode of conducting the election in this county :

Frederick Nix, jr., at p. 715, testifies :

Q. Was it not understood and agreed upon just before the last general election, between yourself, as Republican county chairman, and E. J. Snetter, and other Republican supervisors of election, that they should leave the ballot-boxes at Elko, Graham's, Barker's Mill, and Allendale before the voting and the counting of the votes was completed, for the purpose and with the understood design of contesting the election of George D. Tillman to the House of Representatives from the fifth Congressional district of the State?

(Contestant, notwithstanding the question being irrelevant at this stage of procedure, consents that the question should be asked and answered.)

A. It never was, and I never heard of it before. I did not expect the supervisors to remain at those and other precincts, from what was told to me by various Democratic precinct chairmen, *one of whom is sitting down by me*, that the Republican candidate for Congress would be counted out.

As to Millett's, Thomas Roberts testifies (p. 61) :

Q. In what polling precinct do you live?—A. Millett.

Q. Did you go to Millett at the last general election to vote?—A. No; I wanted to go there, but it was rumored that if the Republicans went there to vote they would be killed, and I started to Red Oak; but about half a mile from the poll a party of men met us in the road and fired over our heads, and the Republicans scattered. About a mile from there, *on another road, another party of Democrats* met us and fired off their pistols. We became alarmed and ran away home. I did not vote that day, but I intended to vote the straight Republican ticket. I slept out in the woods for nearly a week for fear of being killed. The colored people were very much alarmed in that neighborhood. There were many others in the party when the firing took place, and *were afraid to leave home and go to the poll.*

John Woodward testifies (p. 15) as follows :

Q. What is the highest polling place to where you live?—A. Millett.

Q. Did you vote there?—A. I was afraid to go there.

Q. Why?—A. Because of threats to kill any Republican who went there to vote. I started to Red Oak, and a half mile from the poll were met by a party (16) of mounted Democrats, who fired their pistols over us, and our party broke and ran away. I went home, but *slept in the woods* for three or four nights. We had not got over the Ellenton riot, and could not stand to see them tote "them guns." The colored people were much scared in the neighborhood. I was going to vote the straight Republican ticket. I know of about eight Republicans who ran off and did not vote. They would have voted the Republican ticket.

Cross-examined by Mr. HOLMES:

Q. By whom were these reports that the Republicans would be killed if they voted the Republican ticket at Millett's?—A. *By the Democrats.*

Q. How do you know that it was started by them?—A. *I know it because they put out the report.*

Calvin Brown (p. 39) testifies as to Williston:

Q. Who was the supervisor at this poll?—A. A. W. Gantt.

Q. Did he stay there all day?—A. No; he did not.

Q. Was he there when the vote was counted?—A. Yes.

Q. Do you know why he left?—A. Mr. John D. Brown, a marshal, ordered him out. He objected to *any supervisor being around the box*. It was *his house* where the poll was held.

Q. Did you hear him order the supervisors?—A. Yes; he told me that he had received a dispatch from Judge Bryan that *no supervisor* had a right to be around the poll.

Q. Is Brown the sergeant-at-arms of the house of representatives?—A. Yes.

Q. Was Brown claiming to be and acting as an officer of any kind that day?—A. Yes.

Q. Did he have on a badge?—A. Yes.

Q. When Brown told them to go out, did he request them to go out?—A. He said, "I will allow no supervisor in my house;" that he had received a dispatch from Judge Bryan not to allow any supervisor inside the poll.

G. W. Gantt, supervisor (p. 57), as follows:

Q. Were you at Williston on the day of the election as supervisor?—A. Yes.

Q. Did you keep a poll-list?—A. No; I started to do so, but was *arrested by J. D. Brown, who claimed to be an officer*, with a badge on, and put me out of the house.

Q. Was it possible for you to keep any check on the managers without keeping a poll-list?—A. No.

E. J. Snetten, United States supervisor at Elko (page 59):

Q. Was there any railing or anything to keep people out?—A. There was a pen in front of the door 4 by 6 feet, giving space enough for one man to enter at a time.

Q. Were the managers Republicans?—A. No; they were all Democrats.

Q. Did you remain at your post all day?—A. I did not; at the opening of the poll I requested to enter the house where the poll was, but was refused admission by one of the managers, who said that the managers were all honest, and said that *I must go into that pen*. I went into the pen and started to keep a poll-list. Soon after some came up to vote and whispered their names. When I asked them for their names the managers told them not to give their names, as I had no right to take them. This happened a great many times, and I was unable to get the names of voters; there were Democratic voters; there was a great deal of cursing and loud noise by the Democrats; one Dimond made many threats and cursed me, saying that some boys would be up here to-day to see into those big eyes. Many of them were under the influence of whisky; there was a man standing beside me who brandished a large revolver, and I thought that he was going to shoot me; I heard some yelling, and a crowd of about 25 men rode up with red shirts on, and this man said, "Here are the boys that will see in Snetten's big eyes;" they dismounted and crowded the poll, and the pen in which I was torn apart, and, fearing personal injury, I took my things and left the poll.

Q. Were you afraid to stay there?—A. I really was; it would not have been safe.

Q. What time was this?—A. About 8.45 a. m.

Q. How many Republicans had voted at that time?—A. Not more than three, I think.

Q. How many Democrats?—A. About forty or fifty.

Q. Why more Democrats than Republicans?—A. The Democrats were making so much noise that the Republicans were afraid to go up to the poll to vote.

Allen P. Patterson (p. 45):

Q. Did you stay there all day?—A. No.

Q. Why did you leave?—A. A company of Democrats came from towards Blackville: they dismounted and crowded the poll, threatening the Republican supervisor; they tore down a pen in front of the poll; they were drunk, and created a great alarm among the Republicans, causing them to leave the poll for fear of being hurt.

Q. Did you hear any of the managers say anything about the voting?—A. Mr. Nixon, the chairman of the board of managers, said that "d—d if the Republicans would get many votes there that day."

Daniel Patterson (p. 40):

Q. Were the Republicans afraid because of the conduct of the Democrats to stay there that day?—A. They said they were. I was.

Q. Did you hear either of the managers say how many Republicans would be polled

there that day?—A. I heard Mr. Nixon say that there would be a few Republican votes polled there that day.

C. C. Robinson, United States supervisor at Ferrill's Store, testifies (p. 38) :

Q. How was this excess drawn out?—A. The manager looked in the box and drew out the excess.

Q. The manager was not blindfolded?—A. He was not.

Q. How many Republican votes were drawn out?—A. Twenty-two.

Q. Were there any ballots found in the box inclosed in other ballots?—A. There were 18.

Q. What was the character of these ballots?—A. One Republican and 17 Democratic.

Q. Were the managers Republicans or Democrats?—A. All Democrats.

Q. Did you see each Republican cast his vote there that day?—A. Yes.

Q. Can you tell how this excess was created?—A. Yes; the managers said that the ballots found folded together were regularly voted, and unfolded and counted them in the total number of votes cast, and when the excess was found to be 22 the managers drew out 22 Republican ballots.

M. G. Young (p. 43) testifies as follows :

Q. Were you present when the polls closed, and did you see the managers count the votes?—A. Yes.

Q. Do you know how many ballots came out of the box with more than one in them?—A. Seventeen.

Q. What kind of ballots were they?—A. Democratic.

Q. Were there any Republican ballots so folded?—A. Yes, one.

Q. Did the managers compare the number of ballots in the box before they ascertained for whom they were cast?—A. They opened them all and counted them all, and then compared them with the names on the poll-list; then they destroyed the excess of 22 ballots.

Q. How were the 22 ballots drawn out?—A. One of the managers looked in the box, picked out 22 Republican ballots and destroyed them.

Q. Whose name did the Republican ticket have on it for Congress?—A. Robert Smalls's.

These facts are admitted with a boastful frankness on page 83 of the contestee's brief.

These 22 ballots illegally taken from the contestant should be restored, and the same number of fraudulent ballots illegally counted for the contestee should be deducted.

BARKER MILL.

James McMillen testifies (p. 18) as follows :

Q. Did you go to Barker's Mill on the day of election for the purpose of voting, and did you vote?—A. I went to the poll at 6 a. m., but the poll did not open until 8.30 a. m.; remained until about 4 p. m.; being unable to vote, as the Democrats in uniform, armed with clubs and pistols, barred the way and prevented the Republicans from voting, we all went home and did not vote at all. Dave Norris and Ben Myric, active Democrats, told the people that if they would vote the Democratic ticket they would be permitted to do so, but they would not be allowed to vote the Republican ticket. The Republicans, being afraid of violence if they persisted in voting as they desired, finally went home without voting.

C. F. Cave (p. 18) testifies :

Q. Do you know of any intimidation or violence during or preceding the election by Democrats?—A. I do. On the Thursday night before the election a mounted party came to my house and attempted to call me out, but I refused to go. They said that if they heard any more threats they would come back again, but I must look out for Tuesday anyhow. I heard a great many parties riding around the county threatening the people.

Felix Hayes testifies (p. 19) as follows :

Q. Did you vote?—A. I did not.

Q. Why?—A. I went to the poll about 6 a. m., and found that no poll was opened. The poll opened about half past eight, but I was prevented from voting by the Democrats, who were armed with pistols and clubs, wearing red shirts, and threatening

the Republicans. I would have voted for Robert Smalls for Congress if I had been permitted to vote.

Q. Were many Republicans prevented from voting that day?—A. About three hundred and fifty.

Robert Bradley testified (p. 19) as follows:

Q. Did you go to Barker's Mill on the day of election to vote, and if you did not vote, state why?—A. I went to the poll about 6 a. m., and staid until 4 p. m. I did not vote, as a large number of Democrats were present in uniform, armed with pistols and clubs, and who prevented any one from voting the Republican ticket; had I been permitted to vote I would have voted for Robert Smalls for Congress, as would the other Republicans who were prevented from voting, numbering about three hundred and fifty.

It will be borne in mind that this is one of the counties of this district from which no precinct returns and poll-lists were sent to the State board, and that fact being taken in connection with the gross misconduct as evidenced by the testimony, extracts from which are given above, it has been a question with your committee whether the vote of the entire county should not be rejected. If proper returns had been made to the State board they would have furnished the means of ascertaining and correcting the vote of this county, but as the conclusions at which your committee have arrived renders it unnecessary to reject this entire county, because its rejection would not change the result, your committee has deemed it best only to reject the vote of Allendale precinct, as to which the facts are conclusively shown by the testimony, and to correct the vote at Ferril's Store, so as to give each party the vote actually received.

COLLETON CO.—WATERBOROUGH PRECINCT.

The testimony shows conclusively that the mode of managing this poll was most unfair; that the managers were under control of the Democratic county chairman, who was also chairman of the commissioners of election, who appointed all of the managers from one party, and appeared also as the attorney for the contestee. The following extracts show something of the methods resorted to:

Testimony of William A. Paul (page 336):

At the opening of the ballot-box the managers found the box to contain one thousand and thirty-six ballots; at the closing of the polls the amount of the poll-list eight hundred and ninety-five ballots; the excess found in the box was one hundred and forty-one according to my account. After the box was opened the managers quite undecided as to how they would stir the votes up, and they were for some devising a plan how they could mix them so as to take out the excess over the list and to take out a majority of Republican ballots if possible, which they succeeded in doing; and I found after they had commenced to draw the ballots from the box when they would draw out two Democrat ballots and destroy them they draw out from five to six Republican ballots and destroy them also; and one manager was blindfolded who was required to draw the ballots, and turning him back to the table upon which the box was placed, the box being set into a large basket, the box not being able to hold the ballots after being thoroughly stirred then stirred the ballots into this basket, from which they drew the excess over the list. The manager who was required to do the drawing deliberately passed the box through his hands; by so doing one ballot was easily distinguished from the others; they succeeded nicely in carrying out their premeditated plan.

Also the testimony of Daniel Sanders, on p. 370:

Then came the confusion about the votes; both Republicans and Democrats gathered around the box; the box was opened in the presence of all; the law was violated in that the managers told the men how they should proceed before counting votes; the box was set into a basket; the ballots could not be mixed according to law. The box was set into a basket; one of the managers tried to mix the votes in the box, and he failed to do so; and then emptied the votes into the basket. Then the managers got together and they would mix them; they stirred them up; they brought two-thirds of the box to the top were Republican tickets; then the manager said "I could see, to the top were Republican tickets; then the manager said

menced drawing ; they drew for a while from the top, and, as well as I could see, the manager sometimes would draw from the bottom. All this occurred after counting the number of ballots in the box. There was, to my recollection, 140 ballots in excess of the names on the poll-list; then the ballots were put back into the box—130 drawn out, to the best of my recollection. While drawing, or before drawing, they were stirred up again in the same basket; then one of the managers was blindfolded; he drew out about twenty Democratic ballots—would not be positive to that number—and the balance were Republican ballots.

It is clear that there were from 90 to 110 votes illegally taken from the contestant at this poll, and the same number illegally given to the contestee.

The entire conduct of the election in Colleton is most discreditable to those who had it in charge. Except one Republican on the county board, appointed by the governor, and who was outvoted by the other two, every election officer was appointed from the contestee's partisans save one manager at Green Pond poll, and their sole purpose, apparently, was to subserve his interests. Three large Republican precincts, Adams' Run, Ashepoo, and Bennett's Point, having been abolished, this vote was thrown to Groversville and Jacksonborough. The Democratic managers at Groversville did not open the poll on the day of election, and to Jacksonborough the commissioner sent the smaller of two sizes of boxes. At one o'clock this box was full of ballots.

It contained 618, and the managers refused to use another, though over 100 Republican voters were standing at the polls waiting to vote, and others were in sight approaching. Whilst neither the county nor State board had under the plain wording of the statute, which has been construed by the State court of last resort, any judicial power as to the vote for Congressman, yet they threw out this box, depriving the contestant of not less than 618 votes, and without any assigned, known, or apparent reason the board failed to canvass the 276 votes polled for contestant at Horse Pen. (Record, pp. 353, 354, 355, 356, 357, and 378 and following.)

Besides the failure to open the Groversville poll, whereby contestant lost 400 votes, the testimony shows that he lost 700 more by the failure to open the Summerville poll, where a large number were actually present and listed; besides, more than a hundred votes were lost by illegally closing the poll at Jacksonborough.

At Delama, also, the manager failed to open the poll, whilst at Snider's Cross-Roads, Smoak's Cross-Roads, and Carter's Ford the supervisors were hindered and obstructed in the discharge of their official duties. At Maple Cane 26 Democratic ballots were stuffed into the box, and 25 Republican were withdrawn, whereby the contestant lost that number of legal ballots, and the same number were left to be, and were, counted for the contestee.

At Bell's Cross-Roads 31 of contestant's votes were withdrawn and a like number of fraudulent ones counted for the contestee. In this county alone it is shown that from 1,400 to 1,800 Republican voters were deprived of an opportunity of voting by failure to open and illegally closing polls, whilst 223 fraudulent ballots were stuffed into the boxes.

A. P. Holmes (p. 379) testifies:

Q. What kind of a box did they send to Jacksonborough and other strong Republican precincts, where large number of votes are usually polled ?—A. They were all of a smaller size box, there being two sizes; though the box sent to Jacksonborough would have been ample large enough to have held the votes of that polling precinct if the Groversville polling precinct had not been closed, the next nearest voting place.

Q. How many polling precincts were not opened during the election day ?—A. Three.

Q. Were or were they not usually strong Republican precincts ?—A. Two usually give large Republican majorities; the third one a small Democratic majority.

Q. Did the commissioners of election canvass at all the votes of the Jacksonborough precinct?—A. They did not.

Q. Then none of the votes cast for Robert Smalls at the Jacksonborough precinct were counted for him by the commissioners?—A. They were not.

Q. Were there any polls where the managers failed to canvass any votes for Congressman; and, if so, at what polls?—A. The managers of election at Horse Pen poll made no returns for members of Congress to the board of canvassers; the whole number of votes cast at that poll was two hundred and seventy-six. On examination of the ballot-box, as presented to the board of canvassers, ballots were found in the box containing the name of Robert Smalls for Congress.

Q. Is not Jacksonborough one of the strongest Republican precincts in the county?—A. It is among one of the strongest in the county.

Q. Was the Republican vote at Jacksonborough largely increased at this election? If so, state the cause.—A. Gloversville polling precinct having been closed on election day, and the precinct at Adams' Run, Ashepoo, and Bennett's Point having been abolished, necessarily increased the voters at Jacksonborough.

Q. Were they all Republican precincts?—A. They were all largely Republican precincts.

Q. Is Jacksonborough the nearest point or the most convenient to the voters of those precincts you have named?—A. It is to some.

Q. Is it to most of them?—A. It is.

Page 385:

Q. Did you, as a member of that board, object to the way in which the commissioners, or a majority of them, proceeded to canvass the votes?—A. I did. I objected to the canvassing of the Walterboro' precinct, where the statement of the managers gave a total number of the votes cast and returned of nine hundred and fifteen, whereas the managers' own poll-list called for eight hundred and ninety-five names of voters I objected to the excess vote of twenty that has been reported. I objected to the returns of the managers made at Horse Pen of two hundred and seventy-six votes, and returning no vote for Congressman from that poll, or Presidential electors, because on examination of the box the box was found to contain votes for the Republican Congressman and Presidential electors. Also of Snider's Cross-Roads the managers made no returns for Presidential electors, and on examination the ballot-box was found to have contained votes for the same. Ridgeville, in like manner, the managers failed to report a total number of votes cast, according to their instructions, and also failed to return any votes for Presidential electors, and on examination the box was found to have contained votes for the same. I objected to the manner in which the Jacksonborough box was disposed of. I also objected to the George's Station returns, for reasons that the managers failed to return any votes for Presidential electors, and on examination the box was found to contain ballots for the same; also because the poll-list called for eleven hundred and sixty-two, and the statement of the managers was eleven hundred and sixty-six. These were some of the irregularities that caused me to object to some of the proceedings of the board.

Q. Did you raise these objections and call for a decision on them from the board, or did you simply take a note of them?—A. I raised the objections, and had the decision of the board of two or three of the most prominent cases named, and they decided by the usual majority of two not to go behind the returns of the managers; after which I just called their attention in each instance, and made note of the irregularities.

The vote of the county is certified for—

| | |
|------------------------------|-------|
| Contestee | 3,475 |
| For contestant | 2,776 |
| Adding Jacksonborough..... | 618 |
| Horse Pen..... | 276 |
| Walterborough..... | 90 |
| Contestant..... | 3,760 |
| Deducting Walterborough, 90— | |
| Contestee..... | 3,365 |
| Contestant's majority..... | 375 |

RECAPITULATION.

Corrected statement of the vote of the fifth Congressional district of South Carolina:

| | Tillman. | Smalls. |
|--------------|----------|---------|
| Aiken | 3,409 | 1,058 |
| Hampton..... | 1,019 | 1,166 |

| | | |
|----------------|--------|--------|
| Barnwell | 4,700 | 2,431 |
| Colleton | 3,385 | 3,760 |
| Beaufort | 391 | 5,978 |
| | <hr/> | <hr/> |
| | 12,904 | 14,393 |

Smalls' majority, 1,489.

I therefore recommend the adoption of the following resolutions:

Resolved, That George D. Tillman was not elected as a Representative to the Forty-seventh Congress from the fifth Congressional district of South Carolina, and is not entitled to retain the seat which he now occupies in this House.

Resolved, That Robert Smalls was duly elected as a Representative from the fifth Congressional district of South Carolina in the Forty-seventh Congress, and is entitled to his seat as such.

JNO. T. WAIT.
J. M. RITCHIE.
S. H. MILLER.
A. H. PETTIBONE.
F. JACOBS, JR.
WM. G. THOMPSON.
G. C. HAZELTON.

I agree in the conclusion reached in the above report.

A. A. RANNEY.

VIEWS OF THE MINORITY.

The undersigned, members of the Committee on Elections, charged with the consideration of the contest for a seat in the House of Representatives from the fifth Congressional district of South Carolina, submit the following minority report:

This district is composed of six counties, viz, Barnwell, Colleton, Edgefield, Beaufort, Aiken, and Hampton. The official returns of the vote for Congress show a majority of 8,038 for contestee. Contestant claims that this majority should be wiped out, and himself declared to have been elected, upon grounds which may be summarized as follows:

1. Because large numbers of votes were cast for him which were not counted for him by the precinct managers.

2. Because large numbers of votes counted for him by the precinct managers were unlawfully rejected by the county canvassers.

3. Because from the three counties of Barnwell, Colleton, and Edgefield the returns and poll-lists were not forwarded to the governor and secretary of state, as provided for by law.

4. Because of violence and intimidation in all the counties composing the fifth Congressional district, except Beaufort, whereby, as he claims, many of his adherents were prevented from voting for him.

These four charges, it is believed, with the testimony adduced in support of them, comprise the whole of contestant's case. The first three of them are so connected with the provisions of the election laws of South Carolina that in order to pass properly and intelligently upon them it is first necessary to acquire some knowledge of those laws.

The act of 1868 provides that the governor shall appoint three commissioners of election in each county, whose duties prior to the election are simply to appoint three managers of election at each precinct, and to provide one ballot-box for each election precinct. Within three days after the election the precinct managers were required to deliver to the commissioners of election the poll-lists and the boxes containing the ballots, whereupon the commissioners of election became the county board

of canvassers, whose duty it was to count the ballots in the boxes, to "make such statements thereof as the nature of the election shall require," and to transmit to the board of State canvassers any protests and all papers relating to the election.

This law, it will be observed, left the ballots in the hands of the precinct managers of election for three days uncounted, and liable to be tampered with to any extent which might be desired. To remedy this evil the following amendment to the election law, approved March 12, 1872, was passed :

SECTION 1. Be it enacted by the senate and house of representatives of the State of South Carolina, now met and sitting in general assembly, and by the authority of the same, That all general and special elections held pursuant to the constitution of this State shall be regulated and conducted according to the rules, principles, and provisions herein prescribed.

SEC. 2. The commissioners of election shall provide one box for each election precinct. An opening shall be made in the lid of the box, not larger than shall be sufficient for a single ballot to be inserted therein at one time, through which each ballot received, proper to be placed in such box, shall be inserted by the person voting, and by no other. Each box shall be provided with a sufficient lock, and such box shall be publicly opened and inspected to see that it is empty and secure, and then locked just before the opening of the poll, and the keys returned to the managers, and shall not be opened during the election. Each box for such precinct shall be labeled as follows: "Congress," "State," "Circuit," and "County Officers."

SEC. 3. At the close of the election the managers and clerk shall immediately proceed, publicly, to open the ballot-box and count the ballots therein, and continue such count, without adjournment or interruption, until the same is completed, and make such statement of the result thereof, and sign the same, as the nature of the election shall require. If, in counting, two or more like ballots shall be found folded together compactly, only one shall be counted and the others destroyed; but if they bear different names, the same shall be destroyed and not counted. If more ballots shall be found on opening the box than there are names on the poll-list, all the ballots shall be returned to the box and thoroughly mixed together, and one of the managers or the clerk shall, without seeing the ballots, draw therefrom and immediately destroy as many ballots as there are in excess of the number of names on the poll-list. Within three days thereafter the chairman of the board of managers, or one of them, to be designated in writing by the board, shall deliver to the commissioners of election the poll-list, the boxes containing the ballots, and a written statement of the result of the election in his precinct.

SEC. 4. After the final adjournment of the board of county canvassers, and within the time prescribed in this act, the chairman of said board shall forward, addressed to the governor and secretary of state, by a messenger, the returns, poll-list, and all papers appertaining to the election, the said messenger to be paid his actual expenses upon a certificate to be furnished him by the secretary of state. Said certificate shall be paid out of the funds provided for the payment of commissioners and managers of election.

SEC. 6. All acts or parts of acts in any way conflicting with this act are hereby repealed.

The further duties of the county board of canvassers are as follows:

SEC. 18. They shall make separate statements of the whole number of votes given in such county for Representative in Congress, and separate statements of all other votes given for other officers. Such statements shall contain the names of the persons for whom such votes were given, and the number of votes given for each, which shall be written out in words at full length.

SEC. 13. There shall be prepared by the commissioners three separate lists of each statement, besides the lists to be filed in the office of the county clerk or secretary of state, and each list shall be certified to as correct by the signature of the commissioners subscribed to such certificate.

SEC. 20. After the final adjournment of the board of county canvassers, and within the time prescribed in section 15 of this chapter, the chairman of the board shall deposit in the nearest post-office, directed to the governor, secretary of state, and comptroller-general (the full postage paid), each one of the certified copies of the statement and certificate of votes prepared as provided in the last preceding section.

The board of State canvassers is composed of the secretary of state, comptroller-general, attorney-general, State auditor, State treasurer, adjutant and inspector general, and the chairman of the committee on

privileges and elections of the house of representatives, and its duties are thus prescribed :

SEC. 24. The board, when thus formed, shall, upon the certified copies of the statements made by the board of county canrassers, proceed to make a statement of the whole number of votes given at such election for the various officers, and for each of them voted for, distinguishing the several counties in which they were given. They shall certify such statements to be correct, and subscribe the same with their proper names.

SEC. 25. They shall make and subscribe, on the proper statement, a certificate of their determination, and shall deliver the same to the secretary of state.

SEC. 26. Upon such statements they shall then proceed to determine and declare what persons have been, by the greatest number of votes, duly elected to such offices or either of them. They shall have power, and it is made their duty, to decide all cases under protest or contest that may arise when the power to do so does not by the constitution, reside in some other body.

The power to decide contests conferred by section 26 has been held by the supreme court of the State not to extend to contests respecting election to a seat in the House of Representatives of the United States, on the ground that his power falls within the exception, residing, under the constitution, in the House itself.

The foregoing comprise all the provisions of law material to be here considered, and it is in the light of these provisions that contestant's charges are to be examined.

I. The first of these charges, as summarized above, is, that large numbers of votes were cast for him which were not counted for him by the precinct managers.

The election law of South Carolina, as quoted above, provides that if more votes are found in the ballot-box than there are names on the poll-list, all the ballots shall be returned to the box and thoroughly mixed together, and that one of the managers, or the clerk, without seeing the ballots, shall thereupon draw therefrom and immediately destroy as many ballots as there are in excess of the number of names on the poll-list. At a number of precincts in the fifth Congressional district of South Carolina excessive ballots were found in the boxes and were drawn out by a blindfolded manager, as required by law. And the only testimony in the record tending to prove the above charge on behalf of contestant, is the allegations of some of his witnesses that discrimination was made in drawing out this excess of ballots at certain precincts, through which the contestant lost more than his due proportion of the votes cast for him. On the other hand, as to every precinct save one against which this charge is made, the officer who drew out the excess, and one or more of the other officers who witnessed it, were produced, and testified that the drawing was in strict conformity with the requirements of the law, done publicly, without seeing the ballots, without discrimination, and with perfect fairness. And whether tested by their means of knowledge, their intelligence, their social standing and character, or any other of the tests which are applied in non-partisan, fair, judicial investigation, where the witnesses irreconcilably differ, no man who will read the record can hesitate to believe that the witnesses produced on behalf of the contestee are entitled to superior credit. There is absolutely no unpartisan, non-political test which can possibly lead to any other conclusion.

It is to be further observed here, that there is no testimony whatever tending to fix the responsibility for the excess of ballots upon the contestee's adherents. Republicans charge it upon the Democrats, and the Democrats charge it upon the Republicans; but there is no proof, nor anything which is offered as proof, by either side upon the subject. No single witness on either side claims to have either seen or heard of a "tissue ballot," or any other device for the purpose of creating an excess

of ballots, at any precinct in the entire district. There is some testimony as to voting more tickets than one, on both sides; but, if all the testimony upon this subject on both sides be accepted as true, it would not account for as many as fifty excessive ballots in the district.

Finally, upon this subject, if all the testimony offered on behalf of contestant in support of this charge be taken as true, it would not materially affect the result of the election. The following is a complete list of the precincts as to which there is any testimony in the record tending to prove fraud or unjust discrimination of this character:

| | Democratic votes drawn out. | Republican votes drawn out. | Total |
|--|-----------------------------|-----------------------------|-------|
| Aiken County, Summerhill | 3 | 59 | 62 |
| Aiken County, Jordan's Mill | 22 | 21 | 43 |
| Colleton County, Bell's Cross Roads | 12 | 21 | 33 |
| Colleton County, Maple Lane | 1 | 27 | 28 |
| Colleton County, Walterboro' (about) | 40 | 100 | 140 |
| Hampton County, Barusville | 89 | 100 | 189 |
| | 125 | 396 | 521 |

At Snider's Cross-Roads, Colleton, on the other hand, contestant's own witnesses show that only one Republican ballot was drawn out, with a quantity of Democratic ballots, the number of which is not stated, while at Page & Harberson's Store, in Aiken County, nineteen Democratic and seven Republican ballots were destroyed.

No testimony on behalf of contestee as to Summerhill precinct, in Aiken County, appears to have been taken. As to every other precinct, the charge of discrimination and fraud in the matter of the excess of ballots is met and answered as fully and completely as it is possible to meet a charge of that character. Yet, if held to be sustained, it is obvious from the foregoing statement, in the most favorable view possible for contestant, viz, that none of the excessive ballots were cast by his adherents, that the sum total of votes thus lost to him, at all the precincts where discrimination of this character is charged in the testimony, did not exceed 398.

II. The second charge is, that large numbers of votes counted for him by the precinct managers were unlawfully rejected by the county canvassers.

There is not one word of testimony, throughout the entire record, tending, however remotely, to prove the truth of any such charge as this.

There were seven precincts in the fifth Congressional district of South Carolina whose vote for Representative in Congress was not counted, viz: Jacksonborough and Horse Pen precincts in Colleton County, and Ethridge's Store, Perry's Cross-Roads, Coleman's Cross-Roads, Caughman's store, and Liberty Hill, in Edgefield County. The facts are as follows:

It has been shown above that in order to remedy the evil in the election law of 1868, under which the ballot-boxes were exposed for three days following the election to the risk of unauthorized and corrupt interference, the amendment of 1872 required the votes to be counted, by

the Board of canvassers, as required by the act of 1868, b

by the precinct managers themselves, immediately after the close of the balloting, and in public; and that the precinct managers should further make and sign, and within three days deliver to the commissioners of election, a written statement of the result of the election in their precinct. As the ballot-boxes still remain for three days in the hands of the precinct managers, it is obvious that this amendment would be without effect, if the county board of canvassers were themselves still to count the ballots found in the boxes when they convened one week after the election, and to make up their statement from the contents of the boxes at that time. Hence, the county board of canvassers held, very naturally and, we think, correctly, that under the law as amended the counting of the ballots in public by the precinct managers was intended to be final, and that the county canvassers could canvass only the returns sent up to them by the precinct managers. And they did canvass the returns of every precinct which were sent up to them; but no returns being sent up from the two precincts in Colleton and the five precincts in Edgefield mentioned, they had nothing which they could canvass from those precincts.

At Jacksonborough the ballot-box became so filled with ballots that at one o'clock p. m. it could hold no more; whereupon it was agreed, both by the managers of the election and the Republican supervisor, that, under the circumstances, they had no authority to open the box and count the ballot. (See Record, p. 346.) This accounts for the absence of returns from this precinct.

Some attempt was made to charge the adherents of contestee with responsibility for the failure to send a box to this precinct large enough to hold all the ballots which might be offered. The county commissioners of election, however, are the officers charged with the duty of providing the box for each election precinct. These commissioners consisted of two Democrats and one Republican. The latter admits that he was present when the boxes were selected for the various precincts in Colleton County; that they saw the box selected for Jacksonborough, and does not pretend that he objected to its size, or suggested the selection of a larger one. (See Record, pp. 378, 379.) Further, the record shows that the vote at this precinct at former elections had rarely exceeded 300, while at this election the box received 618 ballots before it became full.

Whether the managers might or might not have lawfully provided another box, and continued to receive the ballots, it is perhaps not necessary here to inquire. The law provided for one box at each election precinct, and the testimony shows that the polls were closed when the box became full only after conference and full agreement between the representatives of both parties as to the propriety of that course. (See Record, p. 346.)

As to Horse Pen, the other precinct in Colleton County, a return was sent up by the managers of the election, which, evidently by oversight, however, omitted the vote for Representative. At three other precincts in this county, viz., Snider's Cross-Roads, Ridgeville, and George's Station, the precinct returns, through similar oversight, omitted the vote for Presidential electors. But, as conclusively demonstrating the absence of fraud or corrupt motives, either upon the part of the precinct managers in making their omissions or upon the part of the county board of canvassers in adopting the above-mentioned construction of the election law as amended, limiting their powers to the canvass of the precinct returns, it needs only to be remarked that *every one of these precincts, as a fact, undisputed, and conceded in the record, gave Democratic*

majorities. (See Record, at pp. 330, 386, as to Horse Pen; p. 386, as to Snider's Cross-Roads; at p. 487, as to Ridgeville; and at pp. 324 and 327, as to George's Station.)

The vote of the five precincts in Edgefield County above referred to was not canvassed for the same reason, namely, the fact that no returns were sent up by the precinct managers, and there was, therefore, nothing which the county board of canvassers could canvass. And as to these precincts not only is it not shown, or claimed even, in the testimony that any one of them gave a majority for contestant, but it is neither claimed nor shown that a single vote was cast for him at four of them, nor that there was any violence, fraud, or intimidation practiced at them, either. In other words, there is absolutely neither proof nor claim, in the record, that contestant was not a gainer as to each of these five precincts, as he unquestionably was as to Horse Pen precinct, in Colleton County, by the omission of the precinct managers to send up returns of the votes cast at them for Representative in Congress.

It is to be added that in each of these counties, one of the three members of the county board of canvassers was a Republican, and that in each of them the Republican and Democratic members united in signing and certifying to the correctness of the statement of the result of the election in such county; and one of them, the Republican member of the board of canvassers for Edgefield County, testifies in the Record, at page 210, that he concurred in the construction of the law that the board could not canvass the vote of precincts from which no returns had been sent up. As to the Republican member for Colleton County, see his testimony at page 388 of the Record.

Our colleagues, the majority of the second subcommittee, will find themselves to have been wholly misled as to the facts in their statement at page 3 of their report, that these boards "assumed to exercise judicial powers in throwing out entire boxes, and in not counting the vote polled for Congressman at others, and without any pretense of cause." They did not throw out a single box, nor did they fail to canvass the vote for Congressman of any precinct from which the managers sent up any return to be canvassed.

III. The contestant's third charge is that from the three counties of Barnwell, Colleton, and Edgefield, the returns and poll-list were not forwarded to the governor and secretary of state by the chairmen of the boards of county canvassers of those counties, as directed by law; and that this omission upon the part of the chairmen, whether originating in fraud or in ignorant neglect of legal duty, destroyed the reliability of the official statements by those boards of the result of the election in those counties, from which statements the board of State canvassers made up their statement of the result of the election in the fifth Congressional district.

Strictly speaking, there is no competent evidence that there was any such omission as charged. As a matter of fact, however, it appears that the election officers in some counties of the State, having construed the requirements to forward the returns and poll-list "to the governor and secretary of state," as imposing the duty of sending one set of those papers to the governor and a duplicate set to the secretary of state, the latter officer, just prior to the election, issued a circular to the effect that it was not necessary to send poll-lists to the secretary of state which instruction, it would seem, was understood by the chairmen of the boards of canvassers in the three counties named as dispensing with the necessity of sending up such papers at all.

If it be conceded, however, that these papers were not sent up from

the three counties in question, as directed by law, and even if it were held—though there is no shadow of testimony to that effect—that the omission was *willful*, there are two propositions which, to the undersigned, appear to be too clear to admit of an intelligent difference of opinion as to them, viz: (a) That such omission cannot be held to have the effect of invalidating the reliability of the official statements of the result of the election made by the county boards of canvassers, as contended by the contestant; and, (b) That such omission could not possibly have in any manner affected the rights of the contestant, for the reason that the State board of canvassers could not have considered those papers had they been sent up as directed.

(a) By reference to section 4 of the amendment to the election law of South Carolina, of March 17, 1872, quoted above, it will be seen that the duty of forwarding the papers in question is imposed, not upon the county board of canvassers, but, *after its final adjournment, upon the individual who had been its chairman*. Upon what possible principle can it be said that any omission of duty, whether fraudulent or merely negligent, upon the part of such individual, after the board of which he was chairman has finally adjourned and gone out of existence, shall destroy, or in any manner invalidate the reliability or legal effect of the concurrent, unanimous, official act of the entire board, Republican and Democratic members alike?

(b) The papers in question, it will be further observed, are directed to be forwarded, not to the State board of canvassers, but to the governor and secretary of state. The governor is not even a member of the State board; and, although the secretary of state is, yet not only is there no direction that the papers in question shall be submitted to, or considered by, that board, but, as will be seen by reference to the law prescribing the duties of the State board, quoted above, they are expressly and specifically required to make up their statement "*upon the certified copies of the statements made by the board of county canvassers*," and upon *those statements* it is enacted that they shall "*proceed to determine and declare what persons have been, by the greatest number of votes, duly elected to such offices*," &c.

Upon these grounds, therefore, we hold it to be clear, beyond the possibility of an intelligent difference of opinion, that the omission of the three individuals who had served as chairmen of the boards of canvassers in the three counties of Edgefield, Colleton, and Barnwell to send the returns and poll-lists from those counties, after the adjournment of their respective boards, to the governor and secretary of state, is not even an element to be considered in this case. It has absolutely no possible bearing, either one way or the other, upon the rights of either of the parties to this contest. The sending of them up could not have benefited either, nor can the omission to do so justly injure either.

IV. The fourth and remaining charge is, that throughout all the counties of the fifth Congressional district of South Carolina, except the county of Beaufort, violence and intimidation were resorted to by the friends of the contestee to such an extent as to prevent large numbers of contestant's adherents from casting their votes for him. And the seven hundred closely printed pages of the record are mainly filled with the testimony of witnesses produced to prove and disprove this charge.

In the first place, it is to be observed that while, if proved, this charge ought to unseat the contestee, it can have no tendency to seat the contestant. No principle in the law of elections can be regarded as better

settled than that no candidate can be held to have been elected to office by the votes which, whatever the cause, were not in fact cast for him.

In the second place, without being understood as casting any aspersions or reflections upon the report of our colleagues, the majority of the subcommittee charged with the consideration of this case, it is nevertheless our duty to remark that if issues of fact as to the history and conduct of an election at each of the precincts in five entire counties are to be determined by setting forth and considering only such parts of the testimony of the witnesses of *one* of the parties as make most strongly for him, excluding wholly the testimony adduced upon the other side, and even ignoring such modifications and retractions as have been made upon cross-examination by the very witnesses themselves whose testimony is quoted, as upon the most superficial examination will be found to have been done in the preparation of the majority report, then the so-called adjudication of contested-election cases will indeed have become a mockery.

For the purpose of illustration, again disclaiming any reflection upon our colleagues who have made that report, we would cite the case of Low Town Mills, in Aiken County. The majority report quotes from the depositions of contestant's witnesses, Spells and Washington, so much of their testimony as represents two hundred Democrats, in red shirts, as riding up to the polls, firing into the Republican voters, and driving about one hundred of them into a swamp; but wholly ignores the fact that on cross-examination, at page 133 of the Record, Washington reduces the two hundred Democrats in red shirts to *two*, and at page 134 admits there was not a swamp within four or five miles of the place. It also wholly omits to notice that the testimony of both these witnesses was answered and refuted in every particular by three intelligent and reputable gentlemen, at pp. 258 to 262 of the Record; that the character of Washington for truth and veracity was successfully impeached at pp. 258, 260, and 261-'2, and no attempt to defend it made by contestant in rebuttal; and that not a single man who was beaten, shot at, run into a swamp, who did not vote, was threatened, interfered with, intimidated, or in any other manner maltreated, was produced, or the failure to produce in any manner accounted for.

Where it is alleged that a large number of persons have been deterred from voting by violence and intimidation, the testimony of those persons, or some of them, should be produced. The opinions and impressions of others are not sufficient. (McCrary, p. 327, sec. 431.)

As another illustration, the neighboring precinct of Silverton may be taken. So much of the testimony of D. Bing, contestant's only witness as to this precinct, as, taken alone, would be understood as indicating that the whites drove the blacks from the polls at their precinct, and that the witness could not vote there, will be found inserted in the majority report at page 29; but the admissions of this same witness, at pp. 131-'2 of the Record, that he merely rode by Silverton without stopping, and that he saw only one colored man there, and that one a Democrat, is wholly omitted, as is also the fact that no man who was intimidated, drawn away from, or prevented from voting at this precinct, or in any other manner interfered with, is either produced or named. And yet, at page 33 of the report, it will be found that the entire vote of this precinct for the contestee is thrown out.

So, at pp. 30 and 31 of the majority report, so much of the testimony of contestant's witnesses is inserted as would tend to show, if taken alone, that the Democrats drove the Republicans from the polls at Creed's Store, in the same county, and forced the Republican supervisor to leave; but

it omits to say that this testimony is circumstantially refuted at pp. 267-270, with no attempt upon the part of the contestant to substantiate it in rebuttal, as also that the very witnesses on behalf of contestant, whose testimony is quoted in the report admitted on cross-examination, at pp. 74 and 183 of the Record, that all the colored men were allowed to vote freely as they desired at this poll except one, who was challenged, and who, as shown at pp. 267 and 269, was an idiot. And yet, at p. 33 of the report, the majority for contestee at this precinct is likewise thrown out.

So as to Windsor precinct, in the same county, the majority report quotes so much of the testimony for contestant as would tend to show that the Republican ticket distributor was driven away from the polls; but it wholly overlooks the facts that, at pages 307-'8 of the Record, it is proven by the testimony of the trial-justice for that community, unattacked in rebuttal, that the ticket distributor got into an altercation with a stranger who was not even a resident of the State, and left in a passion, taking the Republican tickets with him, although urged to leave them, after which the trial-justice offered to write tickets for all who desired to vote. And yet, upon this uncontradicted state of facts, contestee's majority at this precinct also is thrown out, at p. 33 of the report.

Again, as to Page and Hankerson's Store, in Aiken County, the majority report quotes the testimony of one Green, tending to prove that he was not allowed to vote; that there was shooting at the polls, and that he was whipped for taking down the names of voters; but it ignores entirely the fact that the alleged whipping is not claimed to have taken place until after Green had left the precinct, and that the Republican supervisor, contestant's only other witness as to this poll, testifies, at page 190 of the Record, that every man who offered to vote was allowed to do so freely; as, also, that the uncontradicted testimony of contestee's witnesses, at pp. 273-'6 and 278-'9 of the Record, shows that the only shooting at or near the polls that day was between two Democrats, who fired at each other in a purely personal altercation; that no one was deterred from voting by the occurrence, over one hundred Republican votes being cast just after it; that no violence was offered Green at the polls, but that his alleged whipping was reported to have taken place after he had gone away, at some point on the road to Aiken Court-House, and that the Republican supervisor signed the Democratic supervisor's report, and declared it had been the fairest election he ever saw.

It is obviously impossible, within the compass of a report like this, to review the testimony as to each of the various precincts in this and the four other counties against which this charge of violence and intimidation is made. The foregoing will be found to be only a fair specimen of the methods of consideration which have led to the conclusions embodied in the majority report of the subcommittee. In the brief filed in behalf of the contestee will be found a succinct but full summary of the testimony on both sides as to each precinct in each of the counties, with a reference to the pages of the Record at which all the depositions on either side relating to each precinct are contained; and to this summary we would urgently refer the members of this committee who may desire to look at both sides of the question, or to the whole of contestant's own side, as to any particular precinct.

There are two precincts, however, viz., Edgefield and Aiken Court-Houses, as to which charges of violence and intimidation are made so strenuously, and the conclusions of the majority of the subcommittee

are, in the opinion of the undersigned, so far from being sustained by the facts, that some brief review of them will be here indulged in.

EDGEFIELD COURT-HOUSE.

Under the heading of this precinct, at p. 6 of the majority report, Andrew S. Lee is made to say that the commissioners of election for Edgefield County were all Democrats. As a matter of fact, Lee testifies that he himself was a commissioner of election for that county, and a Republican. What he does say, at p. 433 of the Record, is, that all the *precinct managers of election*, who are appointed by the commissioners, were Democrats. But he adds, at p. 434, what is omitted from the majority report, viz, that he spoke to the chairman of the Republican county executive committee about suggesting the names of some Republicans for appointment as managers, but received no advice from him upon that point, and that he himself knew of only two or three Republicans in the county competent to act in that capacity, and did not know that they would serve. (See his testimony at pp. 433-'4 of the Record.)

The majority report further quotes the testimony of this witness to show that the county board of canvassers did not canvass the five polls from which no returns were made, but omits that portion of it which shows that he, the Republican member of that board, fully concurred in the construction of the law which denied to the board any power to do so. And as above pointed out, there is not a particle of evidence tending to show that there was a majority for contestant at any one of these five polls, nor, indeed, that a single vote was cast for him at four of them.

The remaining portions of the majority report relating to Edgefield Court-House, as also those relating to Aiken Court-House, appear to have been taken bodily from the contestant's brief; and we could not, perhaps, more succinctly or fairly put the committee into possession of the whole facts, as proved by contestant's own witnesses as well as by those of contestee, than by incorporating into this report, from the corresponding portions of the brief filed on behalf of contestee, the following summary:

Edgefield Court-House.

At this precinct the contestant's testimony is to the effect that, on the night before the election, armed bodies of mounted men rode through the streets of the village, whose red shirts could be seen in the darkness by the flashes of their pistols; that an armed guard, during the night, took possession of the court-house building, which was the polling place, and kept it; that the Democrats took possession of the court-house steps, and refused to allow any Republicans access to the ballot-box; that sentries were stationed in front of the steps under the command of an officer in strange and peculiar uniform, who ordered the Republicans back whenever they attempted to approach the steps; that men were stationed in neighboring buildings, with arms in their hands, commanding the polling place for the purpose of intimidating and keeping back Republican voters; and that by these means from 2,000 to 2,500 voters were prevented from casting their votes for contestant. It is further charged that the Republican supervisor was not allowed to keep a poll-list, and that the polling places were reduced from two to one at this precinct in order to deprive Republicans of an opportunity to vote; and this, we believe, summarizes the charges made on behalf of contestant as to this precinct.

The testimony on behalf of the contestee, if believed, refutes all these charges, and shows as follows: That the Republican leaders conspired to mass, as far as they could, their entire forces at this and one or two other precincts, for the purpose of taking possession of the ballot-box and intimidating and physically overpowering the Democrats; that in pursuance of this scheme they took possession of all the roads leading to the village the night before the election, beleaguered the town, and fired upon a committee of citizens sent out to peaceably inquire the object of their demonstration; that on the morning of the election they marched into the village from every avenue of approach to it in compact bodies, armed partly with fire-arms, but mostly with large, freshly-cut clubs; that, having consolidated their forces, they marched, with yells and uplifted clubs, up to the very steps of the court-house in which the citizens, after their committee had been fired upon the night previous, had taken the precaution to place about fifty men; that these men holding their position upon the steps, and a peace officer having ordered a detachment of a company of the State militia to take position, with their arms, in a neighboring building, where they could be seen, the massed forces of the Republicans, after a time, fell back a short distance, and were then invited and urged to vote by threes, alternately, with the Democrats, but with few exceptions they refused to vote at all unless they could do so *en masse*, and about 11 o'clock a. m. marched away in bodies, as they had come.

With this preliminary statement of the facts alleged upon the one side and the other, we proceed to examine the testimony with especial reference to the *consistency and credibility of the witnesses*, since, where their statements are so hopelessly in conflict, it is simply a question of veracity between them.

And, first, as to the armed bodies of Democrats alleged to have been patrolling the streets of the village, and illuminating their uniforms by the flashes of their pistols, Paris Simpkins, who, with one Lawrence Cain, is the principal witness as to this precinct, testifies as to this (at p. 223) as follows:

Q. Were you present in the town of Edgefield on the night before the last election?—
A. I was.

Q. Did anything unusual occur during the night?—A. Something certainly very unusual for this community; there was quite a number of armed men in the town of Edgefield, who paraded up and down the streets, all mounted, firing off their pistols, and yelling in the most hideous manner. I was on the street myself, and desired to get back to my home, but was afraid to go back on the front street, as I came, for fear that I might be shot; not that I had anything to be shot for, but that, knowing I was regarded as a leader of the Republicans in the county, it was because of this position that I was apprehensive of danger.

Q. How long did this firing continue?—A. It continued almost incessantly for five or ten minutes.

* * * * *

Q. About how large was this body?—A. I would judge there were between three and four hundred men.

Q. Was it before or after dark?—A. Just after dark.

Q. Could you distinguish their faces or clothing?—I could not their faces; but could see by the flashing of the pistols that some had on red shirts.

Andrew J. Lee, Republican commissioner of elections, who was in the village the night before the election, testifies (at p. 212) as follows:

Q. Did you see any mounted men ride through or around the town that night?—A. I did see a number of mounted men, in a body, riding through the town.

Q. Did you hear any firing that night, much or little?—A. I heard several shots fired.

Norman Youngblood, another witness for contestant (at p. 232) testifies:

Q. Do you know anything of a body of armed and mounted men riding through the town the night before the election?—A. I saw a crowd of mounted men ride through the town, but could not see if they were armed or not. About four o'clock of the same evening I met another crowd going away from the town; these men were mounted, and I saw several pistols under their coats as they were going on, and some hanging on the saddles; they returned to town about a half hour before sunset.

Q. How were these men dressed?—A. They had on red shirts, many of them, as much as I could see in the night; those in the day all had on red shirts that I saw.

Q. How many were in the party leaving town?—A. Sixteen of them I met.

Q. How many in the party after dark?—A. About the same number.

Could Simpkins have honestly mistaken sixteen men and "several shots" for three or four hundred men, firing incessantly for five or ten minutes?

The following is the testimony as to this matter of R. S. Anderson, one of the managers of election (at p. 503):

Cross-examination by P. SIMPKINS, counsel for contestant:

Q. Were you in the village of Edgefield on the night previous to the election?—A. I was.

Q. Did there not come into town in the early part of the night previous to the election a large body of Democrats, mounted and armed, uniformed in red shirts, and paraded through the village, yelling and firing off their pistols?—A. I did not see any large body; I saw a small squad come in on horseback. They rode around the park, and some of them seemed to be lively, and fired one or two shots; suppose that was done by some man who was drunk. I saw no arms.

Whereupon Simpkins became intimidated.

As to the officer in strange uniform in command of the alleged Democratic guard in front of the court-house steps, Simpkins (at p. 223) testifies as follows:

There appeared to be an *imaginary* line drawn just in front of the court-house down on the ground; there were Democrats who walked up and down this line, and as the Republicans would come towards the court-house they were told just here not to go any further. I noticed this matter with peculiar interest; there appeared to be an officer in charge of this line; the officer, who I allude to, was dressed in a very peculiar suit of clothes. I have no recollection of ever seeing such a suit before.

Norman Youngblood (at p. 233) thus describes this very peculiar officer:

A man with a calico suit on was in front of the steps, and whenever a colored man would try to vote he would tell him to stand back; he could not vote yet. The white people pushed through the crowd and got in to the poll.

The real character and subsequent history of this "officer" are given in the following extract from the deposition of C. L. Woodward (at p. 510), and that of D. R. Durisoe (at p. 530):

Q. Laurence Cain, Paris Simpkins, and Norman Youngblood, in their testimony, state that there was a man dressed in a peculiar costume, who seemed to be a man in authority, walking a line as a sentinel in front of the court-house. Will you please state how that man was dressed, and if he was not drunk, and acted without authority?—A. I have stated that there were several men in the space intervening between the court-house steps and the front line of the colored people. I recollect that one of these men was dressed in a fantastic clownish costume, who was no doubt dressed in that manner under a spirit of fun. He was, so far as I know, without authority, and acted independently. There was no organization of the white people who were upon the court-house steps, but they were in apparent danger, and generally adopted the suggestions of the men of influence among them, and those of the State constables. *

Q. L. Cain, P. Simpkins, testifies to a line being drawn in front of the court-house, and that a man dressed in fantastic costume, who seemed to be in authority, told the colored people to stand back; on the contrary, was not that man acting without any authority, and was he not under the influence of liquor?—A. It was impossible for any line to be drawn and observed for any length of time, for the colored people most of the time were present, were standing up near and in close proximity to the court-house steps; so close indeed that there would have been no room for a line to be drawn; the party to whom allusion was made as being dressed in a fantastic suit, walking to and fro through the crowd, was without authority in his club and with-

out authority from the party, and at the time was strongly under the influence of whisky, and before 12 o'clock in the day lying drunk by the park fence.

The charge of Jesse Jones, the Republican supervisor, that he was not allowed to keep a poll-list is unsupported by any testimony except his own, and that testimony is as follows:

Q. Did you keep a poll-list?—A. No, sir.

Q. Why not?—A. I did not think it was safe for me to do so.

Q. Why did you think it unsafe?—A. Because if they saw me keeping a poll-list, I don't think they would have allowed me to stay there at all, as I was told by Democrats that if I attempted to make a report I would not be allowed to act as supervisor (pages 245-6).

* * * * *

Q. You say you were told if you kept a poll-list you would not be allowed to act as supervisor; who told you so?—A. I decline to answer that, but *he* is a Democrat.

Q. Did either one of the managers tell you so?—A. They did not.

Q. Did any Democrat tell you so who had authority at the box?—A. No, sir (page 249).

Here, the Democrats who obstructed or intimidated the supervisor is reduced to *one* Democrat, and that one nameless and unidentified. Could any member of Congress retain his seat, if, to do so, he was required to disprove such testimony as this?

This same witness, however, does rebut any presumption which might be entertained, if his story was believed, that the object had, in preventing him from keeping a poll-list, was a fraudulent one in the interest of contestee; as witness the following question and answer at p. 250:

Q. You say you kept no poll-list, but the votes in the box exceeded the names on the poll-list by 15; how do you know that?—A. *I knew that the poll-list kept by the Democratic clerk was correct.* I know it by looking at the poll-list after the poll was closed, and we were about to proceed to count.

With reference to the charge that the polling places were reduced from two to one after the Democrats gained control of the State in 1876, for the purpose of depriving the Republicans of an opportunity to vote, it would no doubt be answer sufficient to say that the legislature of a State will scarcely be adjudged guilty of such an abuse of its powers, by either the national House of Representatives or its committee, at least upon the testimony of such witnesses as those who make the charge in this instance. The testimony of O. Sheppard, at p. 500, and that of S. S. Tompkins, at p. 506, show, however, that since at least as far back as 1841, there never has been but one box at this precinct, except for a short time while the Republican party had control of the State, when two were established; that this, besides being unnecessary, was found to lead to, and facilitate repeating, and was, for that reason, abolished. (See, also, pp. 526-7.) The testimony shows that the Democrats increased the number of precincts in the county. (See p. 530.)

We come, now, to the main and decisive question as to this precinct, viz: Were the Republicans prevented from voting by violence and intimidation upon the part of the Democrats; or, were the Democrats acting purely in self-defense and for the preservation of peace and order, and was the refusal of the Republicans to vote a preconcerted determination upon their part in case they failed in a plan to overawe and intimidate their political opponents and capture the polls?

On the part of the contestee it is claimed, and we think the testimony and the circumstances demonstrate the fact, that the Republican leaders had preconcerted a plan to mass their followers from all parts of the county at this place, intimidate the Democrats of both races by a show of force and violence, and capture and hold the polls; and if they failed

in this, then to refrain, in a body, from voting, and disperse early enough in the day to reach the polls at other places.

That the Republicans were massed at this precinct is shown by contestant's own witnesses. The largest vote ever cast there was about 1,200, Democrats and Republicans both included (p. 239).

On the 2d day of November, 1880, the number of colored Republicans at Edgefield Court-House is stated by their leaders, Cain, Simpkins, and others, to have been from 2,000 to 2,500. And the record shows that they came from all parts of the county, although there were nineteen other precincts in it; brought their provisions in haversacks, and camped about the village on every road that led to it the night before. These facts are agreed on both sides.

Did they contemplate force and violence? The following extracts from the depositions of contestant's own witnesses will answer. Paris Simpkins, at p. 226, testifies as follows:

Q. Did you see the Republicans come in Edgefield village on the morning of the election?—A. I did.

Q. What did they have in their hands?—A. Some of them had sticks and some of them did not have anything.

Q. Describe the sticks they had in their hands.—A. The sticks that I saw were not all alike; some were the size of ordinary walking sticks, and some of them were unusually large, though they walked with them as walking-sticks.

Q. Did you see any sticks in the hands of the Republicans on the day of election that presented the appearance of clubs rather than walking canes?—A. I can only say, in reply to that question, as I have said before, that some of the sticks were ordinary walking-sticks, while others were unusually large for walking-sticks.

Q. Did you see a half dozen Republicans who came in clubs that did not have clubs in their hands?—A. A great many had nothing in their hands at all.

Q. About what proportion?—A. As near as I can approximate it I would say about one-fourth.

Q. Had no clubs in their hands?—A. Yes, sir.

Three-fourths then, of this army of from 2,000 to 2,500 men were armed with clubs.

Norman Youngblood, another of contestant's witnesses, at p. 234, testifies:

Q. Did you see any Republicans armed that day?—A. Yes, sir; I seen some of them there.

Q. What were they armed with?—A. The best quantity had sticks. I seen two pistols with them, but I don't know how many more.

Wiley Weaver, another of contestant's witnesses (pp. 689-693), testifies as follows:

Q. Several Democrats have testified that large bodies of colored men came to the Edgefield precinct armed with heavy sticks or clubs, evidently for the purpose of taking forcible possession of the polls; will you state what the object of the colored men was in coming to the polls in bodies, and also what their object was in having these sticks alluded to; and was it the object to take forcible possession of the polls? (Objected to as a matter of opinion.)

A. The object of our crowd was that the Democratic party had promised to be at the cross-roads to turn us back; we thought that by coming in bodies that it would prohibit them from interrupting us; we taken the sticks, for instance, if they should undertake to run over us we would have something to protect ourselves, and it was not the object to take forcible possession of the polls.

They were not "walking-sticks," therefore, evidently.

Under cross-examination this threat of the Democrats to turn back the Republicans is thus explained:

Q. You say the Democrats had promised to be at the cross-roads; had they promised you to be there?—A. It was a general rumor through the country that they was to meet us at the cross-roads and keep us back from the polls.

Q. Have you been all over the county lately?—A. I have not been all over the county, but my reasons is for saying they promised to meet us at the cross-roads, I

stood carefully and heard the speech of men over here at the academy. They said they beat us in this election, and meet us at every cross-road.

Again, at p. 692 :

Q. You say you brought with you 150 men, and it was not their intention to take possession of the polls. Did you know the intention of each and every one of that 150 men?—A. I know it in this way, *that they had promised to be governed by me, and I knew it by my own mind.*

Q. You, then, don't know the intention of each and every one, of your own personal knowledge?—A. I don't know the minds of them, but know the promises.

With these reluctant, half-admitted indications of contemplation of and preparation for violence and force, coming from contestant's own witnesses, it would, perhaps, naturally be expected that the evidence of it will be rather abundant when the witnesses on the other side are heard. And the expectation is fully realized.

The following is from the deposition of C. L. Woodward, a lawyer and citizen of Edgefield. (See pp. 508-13 :)

Q. What time did you arrive at the polling precinct on the morning of the election, and state what occurred during the day and after that time?—A. I was awakened about one o'clock the night preceding the election by M. C. Butler, who had just returned in a buggy from Newbury Court House, who informed me as he passed Huiet's Cross-Roads that there was a crowd of negroes assembled there, which he estimated to be five hundred to one thousand; that I had better come down to the village and apprise the men here of the fact. I came on down and found a few men in one of the law offices here, and a few in the court-house. I went around to different stores and houses in the village and aroused the men who were sleeping in them. For several days prior to the election there had been rumors about the arming of the negroes; that pistols had been shipped to this county; and the information of the assembling of the crowd at Huiet's Cross-Roads, at that time of night, caused apprehension that an attack was contemplated upon the village. After waking up these men, we all assembled in the court-house; I suppose from thirty to fifty. We did nothing for one or two hours; not liking to be without information of the movements of the crowd of negroes I have referred to, I had the meeting called to order, and suggested that four men be appointed to go out and ascertain, if possible, the intention of the crowd assembled at Huiet's Cross-Roads; Mr. Corley, Mr. Mitchell, Mr. Denny, and myself were appointed, and we rode out in the direction of Huiet's Cross Roads. When we got within two hundred yards of the cross-roads we met seven or eight negroes; we stopped and questioned them; they pretended to have no knowledge of the meeting, but their answers were not satisfactory. Our attention was then attracted by a camp-fire in the woods about two hundred yards to the left; at the same time we heard noisy demonstrations; I proposed to the party to ride up to the meeting peaceably, not apprehending that we would be attacked without warning. As we approached the meeting we heard noisy yells and cries, as if they were being inflamed by the speaker who was haranguing them. We approached the place of meeting by a road leading off from main road in that direction; we had proceeded about twenty-five yards on this road when we heard the command, "Halt, God d——n you, halt!" We halted; and a few paces in front of us we saw a line of men elbow to elbow across the road, or about that close. The night was dark, but the outlines of the men were perceptible; in an instant a number of pistols fired, as we supposed, at us. We turned and dashed back to the main road; the firing of the pistols still continued. This line of men was apparently about one hundred yards from the main body in the woods; the meeting, in a moment, became a perfect bedlam of noises; I heard curses and threatening speeches very loud. We sent one of our number in advance of us back to the village, and came on back ourselves. * * *

Willis Griffin, Daniel Brunson, and myself then rode out to the house of Lawrence Cain, who was the leader of the negroes of the county, and also the chairman of the Republican party, to see if we could ascertain from him the meaning or object of the demonstration out at Huiet's Cross-Roads. Upon arriving at his house we called to him, and, after making ourselves known, he came out; he pretended ignorance of the meeting; we told him that this night attack by armed men barricading public roads upon men riding quietly along the road had caused, and would cause, great excitement among the white people; that from what we had experienced that night and the rumors we had heard during the few days before, we feared that the negroes intended to precipitate a disturbance on the day of election; we told him that knowing his influence amongst the race we had come to him in the interest of peace; that he had better send word to this meeting at cross-roads, and that he had better advise the

negroes generally not to come into the village the next morning in a turbulent and threatening manner, but that if they came in in a quiet, peaceable manner, we did not apprehend any trouble. He pretended to us that he was ignorant not only of the meeting near Huiet's Cross-Roads, but that any of the colored people except those of the immediate vicinity and those in the neighborhood of Antioch were coming to the village to vote. We then went on to the village (I think two of the parties were State constables, appointed to keep peace on the day of the election); by this time it was about daybreak; about or before sunrise a crowd of colored people, about five hundred strong, I would judge, came marching into the village in a column about eight abreast, yelling and flourishing immense clubs, with which it seemed to me every one of them was armed; a number of white men were on the court-house steps, and those who were in the vicinity quickly assembled there; the colored men marched within ten or fifteen paces of the court-house steps; in a few minutes another crowd, not quite so large, came up from the same direction; they also were all armed with immense clubs, which they flourished as they advanced, at the same time yelling threateningly; in the course of one-half an hour the crowd of colored people in front of the polling place had increased until it was variously estimated between fifteen hundred and two thousand; these men all came in the manner of the first crowd, and came in by every road leading to the village; all were armed with clubs; there were about one hundred white men assembled on the steps, and during this time about twenty or twenty-five more had come up.

The colored people by this time were all massed together on the square to the left of the park facing from the court-house, and the front line was within a very short distance of the steps. A negro with a fur cap on, who I was told afterwards was Mose Morton, placed himself at the head of this line, mounted, and, with him at the head, the whole mass marched to within five paces of the court-house steps. There were a few white men in the intervening space; if I recollect correctly, with one or two exceptions they were State constables. About this time a crowd divided from the rear and marched around in a disorderly column of two or three abreast to the right of the park (as we faced them), and advanced up within a few feet of the jail yard, and the line was faced about towards the steps, and everything indicated that an attack was to be made upon the whites upon the steps, and it would without doubt have occurred, in my opinion, and a bloody riot would have been precipitated, had it not been for the careful conduct but determined attitude of the white men upon the steps, the prompt and careful management of, I think, a half a dozen State constables, and the conservative influence of a number of men, composed principally of the militia company of the village, who had position in the Masonic Hall overlooking the public square. The crowd of colored men finally became convinced that their efforts to intimidate the white men had failed, and in a short while a large number of them withdrew in a body and marched out of the village by the Columbia road, and by this time the hostile attitude of the parties had become relaxed and the voting proceeded. The colored men were invited generally and individually to come forward and vote. Among others, I went out through them and told them that they could not come here in the attitude which they had without causing apprehension upon the part of the white people (I addressed myself to individuals); but matters now seemed to be quiet, and that they would all have time to vote. Most of them sullenly refused, as if acting under orders from a common source, that if they could not advance to the polls in a solid mass and have undisturbed possession of the polling place they should not vote at all. * * *

Q. Describe the clubs you speak of as being in the hands of the colored people that day.—A. Most of them were of immense size, and were very formidable weapons; they were apparently freshly cut from the woods for the purpose.

Q. Were not some of these clubs too short for walking-sticks and swung to their wrists by strings?—A. They were, a number of them.

For further testimony as to the violent and threatening entry of the Republicans into the village of Edgefield, and their hostile demonstrations at the polling place, see the depositions of O. Sheppard (pp. 497-501), R. S. Anderson (pp. 502-5), S. S. Tompkins (pp. 505-7), L. Charlton (pp. 513-7), Lewis Jones, sr., (pp. 517-20), and D. R. Durisoe (pp. 526-534).

No denial was attempted, on behalf of contestant, as to the firing upon the committee of citizens near Huiet's Cross-Roads, nor as to the fact that the Republicans did march into the village, and up to the polls, armed with clubs, in dense, organized bodies, and substantially as stated by contestee's witnesses. Under these circumstances it must be conceded that it was not only legitimate, but right, that the ballot-box should be protected from the attack of an armed and riotous mob, and

that proper measures should be taken to preserve the peace and prevent violence. Beyond the fact that the citizens held their position upon the court-house steps, the only complaint as to the measures adopted seems to be that a squad of the Edgefield Rifles, a part of the State militia, assembled at their armory and were seen at the windows with their arms.

As to this, Lewis Jones, sr., a peace officer of the State, thus deposes at pp. 519-30 :

As that large crowd of colored men were approaching the public square, I myself ordered a remnant of the rifle company to rendezvous in Masonic Hall, and to take a position in the windows fronting the public square; they had rifles. There were other men armed with guns, but few in number, who took position in the gallery occupied by Mr. Miners; this was done for the purpose of suppressing a riot, for it looked very much like a riot; it was a precautionary measure, I regarded it, and I think it had that effect.

Not a gun was fired, and not a man was hurt; but R. S. Anderson testifies, at page 505, that he has heard at least twenty Republicans say since that if it had not been for those guns the Republicans would have taken the ballot-box that day.

As soon as the hostile demonstration was at an end the record shows that the Democrats invited and urged the Republicans to remain and vote, and voluntarily made an arrangement for them to alternate with the Democrats in voting. (See pp. 504, 506-7, 514, 517-8, 519, 529, &c.)

Why, then, did the Republicans leave without voting?

It is charged by the witnesses for the contestee that it was a part of the preconcerted scheme of the Republican leaders, if they failed in their purpose of taking forcible possession of the polls, not to have their followers vote at all, at this precinct; and it remains to see how far this charge is supported by the testimony.

A. J. Lee, a witness for contestant, at p. 211, deposes as follows:

Q. Why did you not vote at the last election?—A. *Because the generality of the Republicans did not vote*, and I did not want to vote after they left.

Q. Was not your Republicanism strong enough to cause you to vote?—A. Oh, yes, sir; but I did not think it would do any good, *but I was invited to vote that evening*.

Q. Why did the Republicans not vote?—A. The place was crowded that morning with Democrats.

Q. Could they have got to the polls?—A. They could not have got there *until the Democrats got away*.

Paris Simpkins, at p. 224, says:

I saw quite a number of Democrats rendezvousing in Masonic Hall; they carried their guns or rifles with them; they did not go up in a body, but went two or three together; several times during the morning there seemed to be some excitement; then I could see some of these men who were in the hall rush to the windows in menacing attitude. I then left the vicinity of the box, *and urged other Republicans to leave also*, as I was sure they could not have a fair expression at the ballot-box of their choice, from what I had seen; they did leave without voting.

Masonic Hall was the armory of the militia company above referred to. Why a portion of that company were rendezvousing there on that day, as also what the "excitement" referred to was, has already been shown.

The same witness testifies further:

Q. Did any leading Republican besides yourself advise the Republicans to go home and leave the poll?—A. Yes, sir; Lawrence Cain did for one. David Harris, who was on the ticket for the legislature, did so also.

Q. What position in the Republican party did Lawrence Cain hold?—A. He was chairman of the Republican party of the county.

Norman Youngblood, at p. 235, testifies:

Q. Did you vote in the evening?—A. No, sir; *the reason I did not vote, the largest*

number, or most all, to a small number, left. Then the white people would halloo and ask them why don't they come on and vote. When they got to a small number they would take a few colored and carry them up and vote them. Then the door would be in the same condition as it was before. *I did not vote because the larger number of colored people had gone away before voting.*

S. S. Tompkins, a witness for contestee, testifies, at pp. 506-7:

Q. Could not those voters who left have voted if they had desired to do so?—A. I believe they could have done so, for the following reasons: Just as I finished voting Mr. Durisoe come in to the managers and said, "Hurry up, for there are at least a thousand negroes here to vote, and if you don't hurry you will not get through before sundown." Mr. Durisoe is the Democratic county chairman. One colored man voted just before I did, and there was others on the portico in the crowd. Mr. Durisoe went down in the crowd of colored people and begged them to go near the polls, that in a few minutes those at the polls would be through voting. I also saw Mr. Lewis Jones, sr., urging parties to go up and vote. Mr. Lewis Jones was State constable that day, and a prominent man in the community. After seeing this effort on the part of Mr. Durisoe and Jones I went to my office, expecting nothing else but that every one would vote here who wished to on that day, and was surprised at seeing a large crowd leaving, and among them Paul Holloway, an intelligent and influential negro preacher, whom I knew well. I accosted him and asked him, "Where in the world are you going, Paul?" He replied "I am going home." I replied to this, "You can vote now: there were not twenty Democrats on the portico to vote when I left." He replied to this laughingly, "Oh, I don't care about voting nohow."

L. Charlton (at p. 514) testifies:

Q. Was any discrimination shown by the managers in reference to the voters here the day of last election?—A. None. I voted with two or three colored men; they were sownr the same time I was. When I left the box one of the managers told me to say to the colored Republicans that they could all vote; for them to come up to the box four or six a the time. I told the colored voters on the public square they could vote by going to the polls four or six at a time. They expressed themselves as indifferent about voting. If they could not vote in their own way they did not care to vote at all.

Wiley Weaver, a witness for contestant, who testified he was in command of 150 men, deposes (at p. 692) as follows:

Q. Do you know of your own knowledge, that none of the 150 men that were with you voted?—A. I do.

Q. Did you see each and every one at all times during the day of election?—A. I kept them together, and it was a rule that if 15 or 20 of us could not go up to vote at once that they were all to stay in ranks. They could not get that chance, and no other chance, and we all kept together.

Lewis Jones, sr. (at p. 518) testifies:

Q. Did not the fact of the colored men leaving the polls tend to confirm the rumor that they intended to take forcible possession of the polls, and if they could not do so, then pretend that they were intimidated?—A. I can't say positively as to that; my impression that they intended to take possession of the box, and when they found they could not do that then they dispersed and went to other boxes to vote.

Contestant's witness, Norman Youngblood (at p. 235), says:

Q. You don't know that those men did not go and vote somewhere else?—A. No, sir; I don't know what they did after they left.

And it is a significant fact that out of this army of 2,000 or 2,500 men *not one of the rank and file is produced, or shown not to have voted elsewhere.*

From this review of the testimony relating to Edgefield Court-house, which contestant has made his principal point of attack, there can, we think, be no dissent from the following conclusions of fact:

1. That the Republican leaders massed their followers at this precinct from all over the county, armed with clubs and bludgeons, and intent upon a riotous and violent attempt to take possession of the polls.

2. That the village was, on the night previous to the election, beleaguered by these hostile bands, camped upon all the approaches to it,

and firing upon peaceful citizens, in the public highway, sent out for the purpose of inquiring their object and intentions.

3. That these bands, aggregating from 2,000 to 2,500 men, marched up to the polling place from all directions on the morning of the election, swinging their clubs, with yells and demonstrations of violence, and attempted to take possession of the polls.

4. That they were prevented from carrying out their unlawful purpose in a most temperate and peaceful manner, with the least possible show of force, and, immediately upon desisting, were invited to vote, and offered every facility for doing so which their unusual numbers rendered possible.

5. That, under the inspiration of their leaders, and without reasonable cause, they voluntarily left the precinct in organized bands, as they came, and went elsewhere.

As to the relative character for truth and veracity of the witnesses for contestant and contestee, while it is apparent from the record that the latter are professional and representative men of intelligence and of the highest social standing in their community, there will be found, at pages 494-97 and 489-91 of the Record, affidavits by the chairman of the Republican executive committee of the county and by the individual who acted as the contestant's attorney in taking testimony for him in this county, the genuineness of which is admitted by both of them, in which they, his principal witnesses, swear to repeated instances in which, as members of the legislature, they accepted bribes for their votes appropriating the public funds for the payment of pretended claims against the State.

AIKEN COURT-HOUSE.

The charges against this poll may be summarized as follows:

That the Republican supervisor was hindered and obstructed in the discharge of his duties; that the Democrats crowded the polls, resorted to unnecessary and dilatory challenges for the purpose of delaying and defeating Republicans in their attempts to vote, and made discrimination in favor of Democratic voters in the matter of access to the ballot-box; that violence of language and of act was employed, and a display of fire-arms made, to intimidate Republicans and prevent their voting, and that a cannon was placed in the vicinity of the precinct and used to intimidate and overawe Republicans.

Upon the part of the contestee each of these allegations is denied, and it is claimed that the crowding of the polls was the unavoidable result of the massing of Republicans not only from all parts of Aiken County, but from the neighboring county of Edgefield; that the only display of fire-arms was at one period in the day when a riotous, organized body of negroes attempted to storm and capture the ballot-box, and in the attempt violently assaulted and struck the sheriff of the county, who was endeavoring peaceably to restrain them, when the State constables, wearing their badges of office, appeared on the scene with their arms until quiet was restored; whereupon, without a shot being fired, the guns were removed, and seen no more; and that the only discrimination shown was to sick, aged, and decrepid men of both parties, without distinction, who were allowed access to the ballot-box from the exit end of the approach to it.

The only testimony as to the alleged hinderance or obstruction of the supervisor is that of himself, at pp. 67, 68, which is the following:

Q. How did your poll-list agree with that of the managers?—A. I did not keep a poll-list.

Q. Why?—A. The reason I did not ask for conveniences to keep one, and the managers answered that they had made arrangements for the Democratic supervisor, and the Republicans had a right to make arrangements for me.

* * * * *

Q. Were you hindered or intimidated in any way from doing your duty as a supervisor on that day?—A. Yes.

Q. State what violence or intimidation was used towards you.—A. There was no direct violence, but there were remarks made which caused me to fear to press for an opportunity to carry out my duty as a supervisor. I don't remember the exact words of the remarks, and they were not made directly to me, but they were made in such a way that I understood them to be meant for me. Such remarks as "We are going to look out for Democrats, and the Republicans must for you."

This is the entire testimony upon this point, and it, perhaps, is scarcely sufficient to require a reply. The following, however, is the testimony of James E. Crossland (pp. 278-8), the chairman of the board of managers:

Q. He, Rouse, has also sworn that he was prevented from exercising his duties as supervisor in that room; is this so?—A. Rouse came into the room where the poll was to be held, some time before they were opened, announced himself as Republican supervisor; had writing materials in his hand; we waited together with our watches compared with each other until 6 o'clock arrived, when we opened the poll; our time agreed; also so did we that it was time to open the poll. He asked for a table; I told him we had but one, which was a long one, and that there was room enough for all.

Q. Was he given room at that table, and did he select a place?—A. He was offered room there, and assigned to a place, but insisted on having a separate table. I told him that was the best I could do, and told him that there was a large bench that he could use. I told him, on his refusal to come to table or use the bench, that was the best I could do for him. In course of fifteen minutes, still standing near table, every courtesy having been extended to him that we knew of, he said, "I will withdraw." I told him, that I had nothing to do with that, but I did not see the slightest necessity for it. He asked me to open the door for him. I did so, and he went out. In about twenty minutes he knocked at door again. On finding him at door let him in, and Bardeen, United States marshal, came in with him. He was received with same courtesy as at first, and took position near clerk of board, and stayed there all day; he did not leave the room again that I know of; was not interfered with in any way.

In the next place, as to the charge that the Democrats crowded the polls, discriminated in favor of their own voters, and delayed and obstructed Republican voters by unnecessary challenging:

That the polls were crowded it is admitted on both sides. The responsibility for it is charged by the Republicans on the Democrats, on the ground that the latter obstructed and hindered voting; while the Democrats charge it upon the Republicans, upon the ground that they not only massed their followers there from their own precincts in other and remote parts of the county, but brought a large number from an adjoining county. It only remains to determine which charge is best supported by the proofs.

The following is the testimony upon this point produced on behalf of contestant.

D. R. Rouse (at p. 67) says:

Some of the voters were hindered in voting by being pushed aside by other voters, Democrats, who told them to stand aside, and said that, "When we get ready for you to come in you can come in." They were ordered by one of the managers to stop pushing these voters, who were Republicans, and let them vote. I also said that when one voter got through he had a right to get out of the way and let others vote. But those who were shoving and pushing the voters about refused to stop it and continued to do so, saying that the coons must stand aside until they (the Democrats) said that they could come in.

To properly understand this and other statements as to the voting here, it is to be borne in mind that the ballot-box was approached by a barricade or passage way about twenty feet long and three or four feet

wide (p. 298), leading past a window at which the ballot-box was placed, the voters being admitted in at one end and passing out at the other. The supervisor was stationed in the building where the ballot-box was, near the window, and the crowding and pushing to which he refers must, therefore, necessarily have been between the voters who had already been admitted into this passage-way and had reached the window where he and the managers were. His testimony demonstrates, therefore, that the voters were admitted into this passage-way indiscriminately, and, in the crowd, were "shoving and pushing" each other with a view to vote and get out.

The only other testimony upon this question of *crowding* is the following from the deposition of James Major, at p. 168:

Q. Had there many white men voted at 9 o'clock in the morning?—A. Yes, sir; right smart had voted.

Q. Had there many colored men voted at that time?—A. Not a great deal; there were more white voters than colored, because they commenced to blockade them from the jump, and they kept them barred out until the poll closed. At 6 o'clock in the evening they were standing there.

It will hardly be seriously contended that a Congressman should be unseated because at a crowded poll—and the cause of it being crowded will presently be shown—his adherents had the superior diligence to first reach the polls and gain the vicinity of the ballot-box; especially when, *mirabile dictu*, no "intimidation" or fraud is alleged to have been resorted to for the purpose. But it may be worth while to show the real reason why few Republicans had voted at 9 o'clock for the purpose of illustrating the disposition of the contestant's witnesses to convey false impressions.

The following is from the deposition of George M. Short, another witness for contestant, at p. 174:

Q. Were you at the polls during any part of the day?—A. I was there all day.

Q. State all that occurred.—A. About 8 o'clock there was a crowd; the street was full as it could stand with them, of colored Republicans. Between 7 and 8 Mr. Gloster Harlin, the chairman, *he commenced issuing the tickets and taking names*.

Q. Who is Gloster Harlin?—A. He is the Republican chairman of Aiken County. He commenced taking the names and issuing the tickets, and as they got the tickets they would fall in rotation in line to get up to the ballot-box to cast their tickets.

In other words, the Democrats were voting two hours before the Republicans commenced to distribute their tickets. And contestant's witnesses, and the majority report, attribute the consequent delay of the Republican voters to their being "blockaded" at the polls by the Democrats.

The following is the testimony on behalf of contestant in support of the charge that unnecessary and dilatory challenging of votes was resorted to by the Democrats to deprive Republicans of the opportunity to cast their ballots.

E. M. Brayton, whose vote was challenged, and disallowed on the ground of non-residence, at p. 163, testifies:

Q. When Republican voters attempted to vote were any unnecessary questions asked them, for the evident purpose of delay?—A. As I have said before, I was not near enough, and could not get near enough, to that poll to overhear the questions that were asked, and can only state what they were from the general report.

Q. Give the general report.—A. It was well understood among the Republicans there who were waiting to vote that they were being obstructed and prevented from the exercise of their rights by law, by all manner of questions being asked them that would consume time.

Q. What questions were asked of you?—A. I was asked where I had my washing done, where my family's washing was done, and where my family was living. There were not very many questions asked of me, I being so well known here; but there

was considerable time taken up by consultation among the board of managers, and the arguments addressed to them by the challengers who were present there.

It will be observed that even when the witness was invited to give *hearsay* evidence of improper or dilatory challenging, he is able to respond only by stating that the Republicans, *not at or near the box*, "well understood" that they were being obstructed and prevented in the manner charged. Rouse, the Republican supervisor, and Bardeen, a Republican deputy marshal, both of whom were in the room with the managers, and both of whom testified on behalf of contestant, *make no such charge*.

The following is the testimony on behalf of contestee upon this point:

D. S. Henderson, State senator (pp. 280-287), says :

Q. State right here the manner of swearing voters.—A. Several men would come up and then three or four of them would be sworn and voted, and I saw no distinction in this between Democrats and Republicans; two and three and four would be sworn; no man voted without being sworn, to my knowledge. I was there most of the time, and would have seen it had it been done. Being satisfied that a great many were on ground from Edgefield, we took precaution to get copies of census book of this county from clerk's office; these were prepared by revisers; that we had previously heard of their coming; and the mode of challenging was—when a man came up we did not know this book was referred to as evidence of where he lived—he was asked from what township he was from, and we would see if his name was on the census book; if his name was not there, inquiry was then made whether he could prove that he lived in the county, or whether he could bring anybody to prove that he resided in the county; in other words, this book was not taken as conclusive evidence. *Rouse said he thought that a fair way, and said he had no objection*; this was the United States census, taken last year. If it was shown either by white or colored witnesses that the party challenged lived in the county, though his name did not appear on the census book, he was allowed to vote. I remember several instances in which Rouse identified parties as living in the county, and though his name did not appear on the census book, he voted. Many men who were challenged, when asked where they lived, answered in Edgefield County, and of course were rejected.

James Aldrich, a lawyer and a member of the State legislature (at pp' 299 and 302), says :

I saw no discrimination attempted by any officer. As each batch came up they were sworn and voted, if legal voters. Sometimes a person would offer to vote and have his vote challenged; when it was challenged the party so challenging was required to give reason therefor; the managers would hear challenge. The United States authorites having recently taken the census, copies of the same were procured; reference was made to those census returns as a source of evidence only. As I gathered from hearing discussion and what managers said that those returns were not conclusive with them, when some statement by voters of their residence did not tally with return, and some member of managers or either of supervisors stated of their own information they knew such person entitled to vote, he was allowed to do so; there was no exception to this rule so far as it came under my observation. I saw others offering to vote, whose votes, being challenged, made statements as to residence which were not supported by the census returns, yet such persons were told by managers to get some one to substantiate their statements and bring such persons before the board to give their knowledge as to the facts. Several challenged voters left the polls and after a while returned with some person who could substantiate their statements, and they were then allowed to vote. I have been a manager of election of this county and precinct at all since 1874, and at each and every of these elections I heard parties offering to vote challenged. At last election, different from none of the others in this respect.

* * * * *

Cross-examined :

Q. What was the nature of the questions generally propounded ?—A. They generally challenged for, 1st, non-residence; 2d, a second attempt to vote; 3d, under age, and perhaps one or two for persons who lived at poor-house.

Q. Did you see this census book ?—A. Yes, sir.

Q. In whose possession was it ?—A. I cannot say in whose possession it was; I saw it at polls on table, I think, or window-sill; I was called by some one to recognize some party applying to vote, a colored man; I knew him, and he voted; just then some other was challenged, and I was asked to look in township return to see if his name appeared; I did not find his name; the voter said he could be identified, and

he left the poll for that purpose ; I cannot say that he came back ; I left in a few moments myself ; I think he voted, though. I heard him say so about fifteen minutes afterward.

Q. Is there a registration law in this State ?—A. No, sir.

Q. Were not colored people required to prove residence by a white man when he was challenged ?—A. No, sir ; Rouse was supervisor ; on his say some were accepted ; other colored men would speak up of residence, also.

James Major, witness for contestant (at p. 168), says :

Q. Were there many questions asked of the voters when they went to vote ?—A. Yes, sir ; the colored voters. I did not hear the questions exactly asked, but they kept them there some time.

Q. Were the white voters detained at the box ?—A. No sir.

Q. Could you hear the questions asked by the managers ?—A. I could not hear.

Had the object been to hinder the voting, can any reason be given why time was not consumed upon the white as well as the colored voters ?

But that Democrats as well as Republicans were challenged is shown by the testimony of M. T. Holly, the sheriff of the county, who (at pp. 313-14), says :

Q. Was it the purpose of the managers to facilitate or retard the voters ?—A. I saw nothing that led me to believe but that every man had a fair show to vote.

Q. In about what proportion were challenges ?—A. I cannot say ; perhaps more by Democrats, as there were a large number of strangers here who were unknown ; some from Edgefield.

Q. Were not colored voters so challenged required to locate themselves by some white man ?—A. No, not that I know.

Q. What was the nature of the questions used to those challenged ?—A. The usual question to challenges ; question of age may have been asked, but the colored people do not know their ages generally.

And see pp. 285 and 302.

The foregoing is believed to be the entire testimony upon this subject. Its utter insufficiency to sustain the grave charge of malfeasance made against the election officers is apparent without comment. Two observations, however, remain to be made in this connection, viz :

1st. Not a single witness claiming to have been unnecessarily delayed at the box, or to have been needlessly challenged, or asked unnecessary or dilatory questions, has been produced, unless E. M. Brayton can be regarded as making such a claim. And, as to him, the testimony is as follows :

D. S. Henderson (at pp. 282 and 284-6) says :

Q. How long have you resided here ?—A. Since 1872.

Q. How long have you known Mr. E. M. Brayton ?—A. He was here when I came ; once resided here and practiced law.

Q. When did Mr. Brayton leave here ?—A. Shortly after 1870.

Q. Are you certain that he has not lived in Aiken for past year or so ?—A. I am ; he has not lived here for three years ; he lives in Columbia ; he has had no residence here since 1876. Mr. Brayton's vote was challenged here in the last election because he had not resided here for more than a year. He was questioned as to where he lives, and his business was, and on his answering, he was rejected.

Cross-examined :

Q. Upon what ground did you challenge my vote ?

(Question put by Mr. E. M. Brayton, counsel for Smalls.)

A. I challenged your vote because I honestly believed that you were not entitled to vote at this box according to law, not having been a resident of this county for sixty days next preceding said election ; and because at the time you offered yourself as a voter you and your family were residents of the city of Columbia, in this State ; and this you admitted when questioned at the ballot-box.

Q. What official position do I hold ?—A. Internal-revenue collector.

Q. Do you know where the duties require me to reside, or do you know where the general office is located ?—A. Your office is in Columbia.

Q. When I offered to vote, did I claim that this was my legal voting place ?—A. You so claimed, but admitted that you and family lived in Columbia.

Q. Do you claim or hold that a man cannot live in one place and have a legal vote

in another?—A. I say that in order to be entitled to a vote in a locality, his place of habitual living must have been there sixty days next previous to the election.

Mr. Aldrich, who was a manager of election at this precinct at every election, prior to the last one, since 1874, says (at p. 302) :

Q. How long since Mr. Brayton left here?—A. About three or four years.

Q. Did you ever know him to vote here within that time?—A. No, sir.

Brayton himself admits that he came to Aiken on the morning of the election at about nine o'clock, from Columbia, which is about seventy-five miles distant, on the cars, and returned at about half-past two p.m., as, also, that few questions were asked him.

2d. The number of ballots actually cast at this precinct must be regarded as effectually disproving the charge that voting was fraudulently or intentionally retarded by the election officers. The law of the State requires that the managers shall administer to each person offering to vote an oath that he is qualified to vote at this election according to the constitution of this State, and that he has not voted during this election (p. 476). The only testimony as to the time required for this is the following from the deposition of O. C. Jordan, chairman of the commissioners of election at (p. 316) :

Q. About how long would it take a voter to vote?—A. Without any interference, I should judge, about half a minute to forty-five seconds.

But though the veracious James Major, deputy marshal, swears, at p. 167, that the voters were admitted at the rate of *six to every fifteen or twenty minutes*, the returns, at p. 474, show that over eleven hundred ballots were cast at this precinct, or nearly one hundred per hour, notwithstanding the time unavoidably lost in challenges made necessary by the attempt on the part of the Republicans, *in which Deputy Marshal Major admits participation*, to vote residents of Edgefield County.

The charge of discrimination in favor of Democratic voters in the matter of access to the polls perhaps requires some further description of the approach to the ballot-box. It is thus given, at p. 299 of the record, by Mr. Aldrich, who, as stated by contestant at p. 106 of his brief, is a prominent lawyer and member of the house:

The poll was located in a brick building occupied by Jordan; box at front window, about breast high to an ordinary man; the barricade in front was about twenty feet long, three or four feet from house. I was manager of election in 1876 under Republican administration and a barricade was made by them then longer than this; in fact I do not remember having witnessed an election since 1874 without this barricade. I stood near the polls during greater part of day; much of time stood near the exit end of barricade out of way of voters, but where I could see. The voters seemed inclined to crowd too fast at the entrance, and the State constable, I think, two, were placed at each end of barricade. The voters were allowed to come in, in number two to four at a time; white and colored came in together, Democrats and Republicans. I saw no discrimination attempted by any officer. As each batch came up they were sworn and voted, if legal voters.

No distinction in favor of Democrats in the matter of admission at the entrance end of this passage-way is alleged by any witness. The only discrimination that is claimed to have been made is, that Democrats were allowed to enter at the exit end and vote, and that the like privilege was denied the Republicans.

Contestant's testimony upon this point is the following. E. M. Brayton at (pp. 162 and 165) says:

Q. Did all the voters pass in at the northern end?—A. No, sir; I saw several passing in at the other end, and it seemed to be the general understanding that whenever white people wanted to vote that they would be taken in that end intended for the exit and allowed to vote; while that was going on of course the colored people would be blocked up in the passage way and their voting discontinued. It was understood the large bulk of white people had voted early in the day.

Cross-examined :

Q. Was this knowledge that the white men seemed to be permitted to vote at the exit end gathered from what you heard or from what you saw?—A. My knowledge on that point, I should say, was based more upon what I heard than what I saw; but what I witnessed confirmed the reports that I heard.

What he "witnessed," in this regard, is thus stated by him, at p. 161:

Q. Did you go to the poll to vote?—A. I did, about 2 o'clock; I had been waiting there for an opportunity to get access to the poll where I could vote; I saw no apparent diminution of the crowd at that time; I had observed through the passage, or what was intended for the exit of voters, that there was *occasionally, or frequently*, [which?] voters coming in for the purpose of voting; and the other end, which was intended for the voters to go in to vote, that there was a large mass of people waiting there for an opportunity to vote. I had not been able to find a chance of reaching the poll, so I spoke to the sheriff and told him that I was anxious to leave by the train, and asked him if it was not possible for him to clear the way so I could cast my vote. He said, "Oh, certainly, you can come with me, and I will get you a place." He cleared the way through the crowd, and carried me to the end intended for the exit of the voters to the poll.

James Major, the faithful deputy-marshal (at pp. 167 *et seq.*), testifies :

Q. Were the white men and the colored men allowed to come in indiscriminately?—A. No, sir.

Q. State how they were admitted?—A. The colored people all was packed on that end where they said they had to come in; they were strong from the entrance, packed one upon another up to the poll, and the Democrats had a stick across; at this end where I said they had two men with two sticks across the door, and they let them in. They said no one could come in there. After a while they brought up a white man and said he was a sick man, and let him go through that way. *I had a good many sick men, too; I sent off and brought up my sick men*, and they said, they can't go in here. Finally, all the whites crowded the poll to get in this way.

Q. Which end are you speaking of?—A. The whites went through the south end.

Q. All the white people?—A. Pretty much all; if the colored men went up those in the crowd were cutting them up with knives; they got the people so excited with their cutting them up with knives. I went in there when the crowd was thin.

Q. Did the most of the white voters come in from the south side?—A. Yes, sir.

Q. And the colored people were kept at the north end?—A. Yes, sir.

Q. Would the managers of election let the white men in while the colored people were waiting on the north side to vote?—A. Yes, sir; they staid there until the poll closed, at 6 o'clock.

Q. Did the managers say the colored voters must come in from the north side?—A. I don't know what the managers said.

Q. Did the men say so?—A. They said they must go around on the north end, and the white people on the south end.

The alleged cutting by Democrats will be considered in its place.

Cross-examined :

Q. Was there during the day a colored man let in at this exit end of the barricade who was too sick to vote?—A. Yes, sir.

Q. About how many?—A. I could not say exactly how many, but I know that two or three slipped in at that end.

Q. But was there not some who were sick that they let in that end?—A. After they cut Uncle Sam so bad they let him in.

Q. You know any other?—A. No, sir; no other. I think John Holsom; he was sick, and he went in that way.

Q. You carried some sick people there, and they were refused?—A. I disremember who they were, but I called for some sick. I will tell you who was one that went in, one old man named Greenhiver; he was one of the sick that I tried to get in there.

And this is all the testimony to prove "discrimination."

Mr. Aldrich (at pp. 299, 300), says :

As to discrimination between Democrats and Republicans, in that many Democrats, as it is charged, were allowed to approach the ballot-box from the exit end to vote, this is not true. I did see voters approach the box from the exit end, but such were Democrats and Republicans. Sick voters were allowed to enter there. I saw some ministers and very old people also go in that end. I probably saw some few others

enter there. I do not remember why. This class was not large though. I had no special right to know why they were allowed, as I had no authority over the election, and unless I heard reason made with application therefor I made no effort to discover. I heard a great many Democrats and Republicans told that they could not enter at exit end, and all voters were directed to go to the entrance.

Cross-examined (p. 303):

Q. You spoke of white and colored men entering at exit end; in what proportion?—
A. I cannot say; not many of either.

Q. Did you see more than one colored man?—A. Yes.

Q. More than ten?—A. I saw several; don't know how many.

A. More than five?—A. My memory is not clear. I noticed this as I did anything else occurring that day; I would say more than five, though.

Q. Were there more than twenty?—A. I cannot say; I have given you as far as I could.

Q. Of the number of colored men you saw enter exit end were they Republicans?—

A. Yes; they were mostly Republicans.

Q. About how many whites entered at exit end?—A. I cannot say; there may have been ten, fifteen, or thirty; possibly more or possibly less; as compared with number that entered entrance end it was small. A reason had to be given for one's going in at exit end, sick, aged, and so forth.

Q. Were there less than 300?—A. Yes.

Q. Less than 150?—A. I don't think I saw more than fifty, if that many, enter at the exit end—that day.

James T. Wingard, the town marshal of Aiken, testifies (at pp. 309, 310:)

I could not vote until late in afternoon on account of crowd of colored men. Some one got me in to vote or I could not have voted.

Cross-examined:

Q. At what end did you vote?—A. At exit end.

Q. Did colored people surround that end?—A. Yes, and voted there; they let in two colored men when I voted; they were Republicans.

O. C. Jordan, a lawyer (at pp. 315, 316,) says:

Voting continued, and the pressure was great, and hard for any one to stay in the crowd. I saw white and colored men leave the crowd; could not stand the pressure. I stood there at the entrance over three hours to keep the entrance clear. Later some one said John Holstein is here, a colored man with consumption, and wants to vote. I went to the carriage door and took him through the exit end, and told the parties there to keep the crowd out, to let him in, as he was unable to go in at the entrance. They let us in and he voted directly. Sam Harvey was driven up in a cart, and said he had been cut, and has come back to vote. I took him in at the exit end, and he went in that side also and voted; a colored man. A drunken man was standing near the exit end and used oaths about colored men being let in and not whites at the exit end. Chatfield, in a few moments, walked up and said: "I can't stand to press in at the entrance; get me in to vote." He is a Republican, and the parties knowing him, let him in at the exit end. They knew him as a respectable man. As he came out this drunken man cursed Chatfield. He (Chatfield) slapped me on the shoulder and said: "That man is crazy." I voted others at that end. I have four colored men at work with me. They all voted the Democratic ticket. As to the location of the polling place, the idea to change it to the place where it was held was not had until the day before the election. We had heard that all the Republican voters would be massed here, and the place previously agreed on was on a side street, considered too narrow for the crowd expecting to be here, and the change was made to Main street as more fit for all purposes. I am fully satisfied had the colored people conducted themselves in a becoming manner there would have been no trouble at this poll.

And see testimony of D. S. Henderson at p. 286.

The testimony shows but three able-bodied men, besides the town marshal, who voted at the exit end, viz: Brayton, Chatfield, and Deputy Marshal Major—all Republicans.

James E. Crossland (at p. 228. says:)

Q. James Major has stated that the Republican voters were prevented from coming in to vote, and that Democrats were allowed in freely; state if this be so or not.—A. During most of the day I administered oath to voters; occasionally one of the other

managers would take my place; but while I was on duty there was a continuous stream of voters coming in at entrance end and going out at exit end. As far as I could see there was no discrimination made.

And neither the Republican supervisor nor Deputy Marshal Bardeen, both of whom were with the managers, and both of whom were examined as witnesses for contestant, make any charge of this character.

The following testimony, showing why the polls were so crowded at this poll, may as well be introduced here:

Mr. Henderson, State senator, at p. 282, says:

Q. State whether or not there was a large crowd of negroes here that day or not?—
A. An unusually large crowd from Silverton, Miles's Mill, Langley, Beech Island, Runs Chalk Beds, near Bath, who could easily have voted at their homes. There were precincts at Langley, Schutz, Low Town, near Miles's Mill, at Beech Island, and Silverton. They were plenty from Edgefield also.

Mr. Crossland, (at pp. 288, 289,) testifies:

Q. How long have you resided in the territory embraced in the present county of Aiken?—A. About thirty-five years.

Q. Have you not surveyed in a great many portions of the county?—A. Yes, sir.

Q. Have you planted in Aiken County; and, if so, how long, and in what locality?—
A. I have planted since 1852, on the Upper Three Rivers, near line in lower part of county; in Beech Island, in Millbrook, and Aiken townships.

Q. Have you, then, not had occasion to become acquainted with the negroes in that part of the county?—A. I know a great many of them in that part.

Q. Did you not see a great many negroes here that day that reside in those remote sections of the county?—A. Yes, sir; I saw some from various remote parts of the county.

Q. Did you not see some there from Edgefield?—A. I heard at least three acknowledge at the poll that they were from Edgefield County; strangers to me.

Q. Do you not know the locality of the various voting precincts in the county?—
A. Yes, sir; a great many of them.

Q. Were not a good many colored people here who lived much further from this poll than others in the county?—A. Yes; a great many.

A. Was not the crowd at the poll, and the consequent exclusion of a few at the close, due to this unusual influx from other remote sections of the county?—A. I think so beyond doubt.

Q. Had these colored people remained and voted at the precincts in their neighborhood, would not every white and colored man here have had an ample opportunity to vote?—A. Yes; hours before the polls closed they would have finished. *This was the largest vote ever polled here.*

Q. Do you not know that a considerable number of the Republican voters reside in the vicinity of Langley and Silverton precincts?—A. Yes, sir.

Q. Can you state how many Republican votes were polled at Langley and Silverton?—A. Not a one at either poll. James Powell, a northern man and supervisor at Langley, voted Democratic ticket, all but Garfield. Said he could not stand Smalls

See also testimony of Mr. Aldrich, at p. 300; Thomas H. Hayne, p. 317.

Contestant's own witness, James Major, the "deputy marshal," testifies as follows, (at pp. 172, 173):

Q. These three hundred men and over, were they from Aiken precinct, or from other parts of the county?—A. They were from Aiken and some were from Mile's Mill.

Q. Were not the majority from Miles' Mill, and other precincts outside of the county?—A. Those that came from Miles' Mill were out of Aiken.

Q. Was not a majority of those 300 from other precincts outside of Aiken precinct?—
A. I did not notice among that pile to see who were from Aiken and who were not.

Q. You have sworn they were from Aiken.—A. I don't know where they were from. I know a great many; some that were not from Edgefield, and they were from Edgefield.

Q. Were these three hundred men and over, who did not vote on that day, from Aiken precinct?—A. No, sir; I told you that some were from Miles' Mill that they objected to and would not let vote.

Q. Was any of them from Aiken precinct?—A. Yes, sir.

Q. About how many?—A. I can tell you for certain about what I know had no right here; there were about twenty or thirty that I know had no right here in Aiken precinct; they did not vote; I can be certain of that.

Q. Were these twenty or thirty refused by reason of challenge?—A. Some were re-

fused by challenge, and some were refused. I forget now what was the reason, and some could not get in *of those I told you*; and after that cutting was going on there, they said they were afraid of their life. Some *that I gave the tickets to* returned the tickets to me and said they were afraid to vote.

Here a United States deputy marshal, appointed in the interests of "a free ballot and a fair count," admits distributing tickets to persons whom he *knew* to have no right to vote.

The next charge against this precinct is that violence of language and of act was employed, and a display of fire-arms made to intimidate Republicans.

The only witness complaining of the usage of violent and abusive language toward him is E. M. Brayton. At p. 161 he says:

Q. Give some of the threats, if you please.—A. Well, it is not easy to recall the precise language that was used.

Q. Well, the substance?—A. The substance was that I was a scoundrel, and that I had come here for the purpose of stirring up a strife amongst the people, and I ought to be run out of town. One man would say he wanted a lock of my hair, and another would suggest to clip off a part of my ear, and such abusive language.

That in a heated contest some uncomplimentary remarks should be made by somebody, out of an assemblage of more than a thousand voters, about a man who came on the cars from a remote part of the State and tried to vote in a county in which neither he nor his family had resided for nearly four years, is perhaps, whether justifiable or not, rather natural. He testifies that no violence was done to him; and if what he says above be taken as literally true and unexaggerated, it is hardly sufficient to require that the poll be thrown out. That some allowance is to be made for Mr. Brayton's statements, however, aside from the height of the barricade before referred to, will appear from the following:

Q. What was the appearance of the poll when you were there?—A. During all the time there was a boisterous, turbulent crowd, cursing, threatening, and brandishing weapons.

Q. Both Republicans and Democrats?—A. No, sir; the Republicans were very quiet and orderly; these were Democrats; there was a particular time when they seemed to be specially excited; that was on my return to the poll, from the time when I first went off; I came back to the poll on the opposite side of the street from the poll; as I got abreast of the cannon facing Lawyer Henderson's office, there were a crowd of white men, and they commenced cajoling and talking abusively; as I passed on the noise increased; the general attention of the crowd seemed to be directed to me. After that there arose a scream and shout towards me, and as I approached near the corner of the poll the crowd appeared to be surging towards me, and as I reached the corner it looked as if I was going to be surrounded by the crowd—a crowd of these people.

Q. Democrats?—A. Democrats; coming up at the same time there were several white men who appeared from their badges as if they were acting as peace officers. I walked nearer the poll, probably going about thirty feet from the corner; then I stopped; a crowd came running to me, and among them a good many colored people—Republicans—who I presumed had come in a friendly spirit, for the purpose of giving me protection if it was needed, for it certainly looked as if it threatened to result in violence and trouble. I saw a good many of these white men with weapons in their hands, and they were indulging in threats and jeers.

Q. Against whom?—A. Particularly and generally against me, I think. The sheriff also up to that time, and begged and pleaded with the crowd to go back, and he kept close to me for the purpose, apparently, of protecting me if there was danger. That condition of affairs continued for half an hour or three-quarters of an hour, I should judge; it appeared during all that time that trouble was imminent; these various threats could be heard from these men as to what ought to be done with me. (Brayton's deposition, pp. 160, 161.)

This turbulent, riotous, and perilous scene, not substantiated by any other witness, is thus described by Sheriff Holley, at p. 313:

Q. Was not Mr. Brayton cursed and abused by white Democrats?—A. On one occasion only; he was around the polls all day while in town. *A few persons were talking of him sneeringly; as soon as I discovered this, I walked up to them and told them to let Brayton alone, and they did so.*

But two acts of actual violence are charged: first, that some colored men were cut with knives, and, secondly, that some one threw pepper among the voters in the barricade, which flew into their eyes.

One man, Sam Harvey, is shown to have been cut, but by whom or under what circumstances does not appear. Major, whose testimony as to the cutting has been partly quoted above, says it was done while the colored people were trying to get in at the exit end of the barricade to vote. Short, however, who claims to have seen it, as also Johnson, were under the impression that it was done in the crowd at the entrance end. The man himself swears that he does not know who cut him. Major, though he swears in one place (p. 169) that it was done by "Democrats," swears in another (pp. 170-1) that he saw but one man have a knife, and that he does not know who did the cutting. On the other hand, Mr. Aldrich, at p. 303, testifies that he saw colored people armed with pistols, clubs, knives, and sticks, and having knives in their hands, open.

But, whoever did the cutting, the injured man afterwards voted; and no one else claims to have been prevented from voting by the occurrence.

No other man who was cut or otherwise injured by violence throughout that day, except the sheriff, was either produced or named. .

As to the pepper, there is no testimony as to who threw it, and only one witness produced, George Knight (pp. 180-1), who professes to have been struck by it. This witness says in one place it was thrown from a window, and at another that it was thrown from the door, and again that he does not know who threw it. It was thrown promiscuously into the barricade where the Democrats and Republicans were congregated together, if, indeed, it was thrown at all, which is perhaps not a little doubtful. Contestee's witnesses who were at the polls and in and out among the voters all day swear that they never heard of it until some time after the election. None of the contestant's witnesses claim that it was thrown more than once, nor that any votes were lost to contestant by reason of it.

And, indeed, it is hard to see upon what theory this committee is asked to find, in the absence of all proof, that the Democrats were responsible for this act, if such act there was.

As to the display of fire-arms, the following account of it is given by contestee's witnesses, which, as it is neither denied nor varied in any particular by any statement of any one of contestant's witnesses, must necessarily be taken as true:

Mr. Aldrich, at pp. 300, 301, testifies:

I myself saw a considerable number of colored men, marching in columns of fours, approaching the town and the polls by the Edgefield road. They were in command of a colored man, who seemed to be giving orders. This company of men were yelling and screaming, and brandishing sticks as they approached the polls; and in this manner were marching to the polls. Their leader had on a blue uniform—blue shirt. As these men marched up they were met by peace officers. I heard a great many say: "Stand back! stand back! don't crowd the polls. You will have a chance to vote. Take your position and go in in your regular turn." This company pressed right on, the head of it then quite near the polls. Then I heard peremptory orders from the peace officers that they must not crowd the polls in that manner. The excitement continued to grow. I saw men, white and colored, running, some away from the polls and others up to the place where an altercation between the peace officers and this company seemed to be going on. I think then it was that I heard this officer in blue rallying in his crowd. A riot seemed imminent. Many of the peace officers acted with a calmness and a courage that I have seldom seen equaled. It seemed that all remonstrance had no effect on this company. I saw then several of the peace officers with guns in their hands. Such officers as had guns did not rush on this crowd or company, but stood at some distance on the opposite side of the street, and appeared to be waiting developments. There were a good many peace officers, State constables—county

officers, high sheriff and his deputies, and town officials. I believe that this appearance of State officers and others stopped the riot. I saw a demonstration somewhat similar to first which happened later on in the day, in quelling which second disturbance the high sheriff was struck by a colored man and Republican. The excitement then was at a great height, and some ten of the peace officers gathered again with their guns, and the turmoil and fuss subsided. I heard no gun fired during the day. I saw no Democrat assault a Republican; saw very few men arrested. Put up three, I think.

Mr. Aldrich further states, at p. 304, that each of the constables had on the regular badge.

The sheriff, at pp. 311, 312, says :

Q. Did you see any disturbance that day? If so, give an account of it.—A. Between 1 and 3 o'clock I was near poll and heard a tremendous yelling on the main street where the poll was, and soon after I saw a crowd of colored people coming, waiving sticks in a threatening manner, so much so that I went towards them and met them some one hundred yards from the polls; I went in front of this crowd and held up my hand and motioned to keep quiet that I might talk with them; I stood there till they advanced so near that I had to get out of way or be hit with their sticks; I got out of their way and stood one side until part of the column had passed, still waving my hands to them, but they did not heed me; kept on towards the poll; I then started off in a fast gait to get again to the head of the column, where quite a crowd was waiting to vote; I got then near entrance to poll, and I saw that the whites were excited; so were the blacks; I told them I would preserve order, and I walked back into crowd and commenced to talk to them again, appealing to them to keep quiet, or they by their conduct would bring on bloodshed; in getting back some thirty yards I met up with a colored man, John Mosely, who was extremely unruly, and as I had known him all my life, addressed him kindly, advising him not to go on as he was doing, as it was unnecessary, and as the sworn peace officer I must keep it, upon which he raised his stick and flourished it over his head and said, "I'll be God damned if I don't die right here." I said, "That is foolish," and I intended to preserve peace; wanted him to so understand; he then drew his stick, a very heavy hickory stick, in right hand, and with his left struck me in the breast; his drawing the stick over my head led me to think he intended to hit me with it; as he pushed me back with his left hand I caught hold of him; the crowd then surged upon us; not knowing what for, I drew my pistol, believing they intended to rescue him or assault me, but when I drew pistol and told crowd to stand back they got out of my way; about that time Mr. Wingard and others came to my assistance and we carried him to guard-house. After putting him up Mr. Wingard said, "We will have to put up Arrington to save a difficulty;" he was in command of this riotous crowd, giving orders, &c. We took him and locked him up. That ended the disturbance for that day.

See also the testimony of D. S. Henderson (pp. 283 and 287), James T. Wingard (p. 309), and O. C. Jordan (pp. 314, 315).

It is worthy of note that although this riot and the display of arms upon the part of the State constables, by which it was quieted, took place during his stay at the polls, E. M. Brayton, the only witness of any intelligence and respectability produced on behalf of contestant as to this poll, makes no reference to either in his entire deposition. His disposition and anxiety to color the case as strongly as possible for contestant is apparent in every sentence his deposition contains, in view of which fact his silence as to this armed "demonstration" is too significant to require comment.

The remaining charge against this precinct is that a cannon was placed in the vicinity of the poll, and used to intimidate and overawe Republicans.

In his notice of contest the contestant claims that this cannon was loaded; but no *offer of proof* to this effect was made.

But three of contestant's witnesses speak of this gun, and they are Brayton, Major, and George Washington Short.

Brayton's testimony on this point (p. 160) is as follows:

What seemed to me unusual was the appearance of a mounted cannon facing the poll.

Q. How far away?—A. About seventy-five feet from the poll; two-thirds of the way down the street from the poll was in a line with the cannon. There was a collection of white people standing by the cannon on the other side, *and they were pretty thickly packed between that and the poll.*

Q. Did any of these people standing around the cannon appear to have charge of it?—A. Not at that time.

Q. What building or office was this cannon stationed near or in front of?—A. In front of Lawyer Henderson's. It was almost in a direct line between that office and the poll.

No other "time" is mentioned by this witness at which anybody did appear to have charge of it. The ever-faithful Major, however, testifies, at pp. 169, 170, and 172, as follows:

Q. Did you see any men in charge of the gun during the day, or handling it?—A. No, sir.

Q. Democrats or Republicans?—A. Democrats; Republicans ain't got anything to do with that.

Q. Did you see any men with guns in their hands?—A. Yes, sir. * * *

Q. What did they do with their guns?—A. They formed in line.

Q. By the cannon?—A. Yes, sir.

Q. Who was in command of them?—A. I don't know the commander, I just seen em; I don't know who commanded them, but I know them every one. * * *

Q. Was there any firing of guns or cannon or pistols during the night before the election or the day of election?—A. The day of election the cannon was fired.

Q. What time?—A. Along between three and four; I was in bed when I heard it.

Q. Shoot many times?—A. I never heard it but that one time.

Q. Heard any other firing?—A. No, sir; they did not fire any that day, after I heard that morning.

Cross-examined:

Q. Was this cannon in position when you first came up?—A. Yes, sir.

Q. You know who carried it there?—A. No, sir.

Q. Was it loaded?—A. Well, I don't know that.

Q. Was there a gun or pistol fired in or about the poll that day from the time it was opened?—A. I did not hear it.

George Washington Short's testimony as to the cannon (p. 174) is as follows:

Q. Do you know of any violent demonstration, such as the firing of cannon, pistols, the display of knives?—A. I know this: just about good daylight the last cannon was fired.

Q. How many times did you hear the cannon fire?—A. Just between 5 and 6 in the morning, to my recollection, the cannon was fired six times.

All the other witnesses, on both sides, agree that this gun was fired but once on the day of election, and all agree that this was not later than 4 o'clock in the morning. Evidently this witness does not derive his name from any close moral resemblance to his illustrious namesake.

Again, at pp. 174, 175 he says:

At the time while that was going on I threw my eyes over the street, and there was a military company with guns.

Q. Bayonets fixed?—A. Yes, sir; and cannon fixed.

Q. Cannon bearing on anything?—A. Yes, sir; bearing upon the colored voters, so if it was fired it would have cut them down.

No other witness on either side saw a bayonet that day. And see the testimony of Mr. Aldrich, at p. 305, and of the town marshal, at p. 311. Finally, at p. 175, Short continues:

I saw Lon^o Cutner go and move the cannon more in a position upon us. I looked on him and saw when he done it. The whites were crowding down on the colored with guns and pistols in their hands.

No other witness saw this incident as to the cannon, and no other claims that the whites at any time moved toward the colored people with either guns or pistols in their hands. At the only time when any

guns were seen, namely, at the time of the riot, the testimony is conclusive and uncontradicted that the State constables who had them "did not rush on this crowd or company [i. e., the rioters], but stood at some distance on the opposite side of the street; . * * * never approaching any Republicans; remained on the opposite side of the street." (See pp. 300, 305, 310.)

Before parting with Short, it may be as well to note the fact that every material allegation in his deposition is refuted by either contestant's own witnesses or those of contestee, and frequently by both. His order of intelligence may be fairly estimated from the following extract taken from his deposition, at p. 176 :

When these men went up to vote there were men there that asked them if they could vote; when I went up to vote Mr. Kline said, "Ain't you Jacob Jenkins?" I said, "No, sir; my name is George Washington Short. They generally call me Jacob for short; I suppose it is a too great honor to give me my ex-name."

His character, and that of two other of contestant's principal witnesses, is thus stated by Mr. Aldrich, at p. 305 :

James Major, George Washington Short, and Jack Robinson I have seldom seen at any work—never at steady work; so far as Major is concerned, about elections is very busy, and election matters. George Washington Short saws a little wood occasionally. He loafes most of his time. Jack Robinson—never saw him strike a lick of work in his life.

This charge as to the cannon, it will be observed, rests almost wholly upon the testimony of these two men, Major and Short. Brayton testifies only as to its location, which is not denied. The testimony upon the other side effectually disproves any improper intention or effect. And, indeed, no witness testifies that he was intimidated by it, or that any objection or complaint was made about it by any one *until after the election*.

D. S. Henderson, pp. 282 *et seq.*, testifies :

Q. It has been said a loaded cannon was pointed at the polls, and was put there by Democrats to intimidate colored voters?—A. That cannon was brought to Aiken for a public celebration, some time short while previous to election; it was carried to depot before election to return to Augusta; and it was from some cause not sent by railroad company, they not having car suitable just then. On night before election there was a meeting in town, a procession, &c., and some of the young men of the town brought it up-town and fired it off, and it was left there. Besides that cannon there was another not fifty yards from it, which has been often used on public occasions, and just as formidable as the other, which has been there for several elections, and is there now in the street, not over seventy-five yards from where the polls were held. As far as the cannon from Augusta being loaded, I know that no such thing as grape, ball, or buck-shot was about it; there was not even any powder with it; it was not loaded, for men were using the staff in it all day; and I will say right here that it is all foolishness to say that this cannon was pointed on Republican voters at the polls, for there was all the time more white men in the crowd than negroes, and in the room there were more Democrats than Republicans.

Brayton, it will be observed, testifies that the whites were pretty thickly massed between the cannon and the polls. Only Short denies it.

The witness continues :

Q. As a matter of fact, do you not know that no man was frightened, white or black, by that cannon?—A. No one was frightened by it; I was in crowd all day, and saw no one show any uneasiness about it.

Q. What time was the cannon fired?—A. I cannot say; I heard it, perhaps, after midnight.

Q. Do you know whether it was fired by instructions of leading Democrats?—A. I do not know, nor do I think so.

Q. Did you hear it stated during the day of election that it was loaded?—A. I did not.

Q. Did you hear any colored men say that it was loaded?—A. I heard no one say that it was loaded; in fact I believe they knew it was not.

Q. Was any effort made to take that cannon away?—A. No.

Mr. Aldrich, at p. 301, says:

Q. Something has been said of a cannon; do you know anything of this?—A. That cannon was brought over here some time previous to the election, for the purpose of firing salutes at a Democratic State meeting the day candidates for State offices spoke here. It was to have gone back to Augusta, but for some reason the railroad did not carry it back—short of cars, or something of that kind. I saw it at depot just previous to election. Some procession had it shortly before election; it was brought from depot, and a salute was fired with it. It stood in the street some time—for several days, I think—before election. I would state that near the place this cannon stood is another, in the street, belonging to Var M'Fitch, which he bought and gave to some young men of the town. It is now still in the streets, and has been there for several years. I passed by the cannon; nobody seemed to control it; no ammunition that I heard of. If I remember correctly, in the morning some half-grown boys were sitting on it and playing with it, and I think they turned it toward the box; I told them to clear out.

Q. Were there not a great many white men in the crowd?—A. Yes; a great many white people, and they were between the colored people and cannon. The barricade run north and south; the voters approached at north end; the colored people gathered at northeast and Democrats at northwest; cannon was west of box; had it been fired to injure colored men before the charge, had it been loaded, it would have had to pass through this body of the whites. If any colored man or Republican was afraid of that cannon, I never heard of it. No one was in charge of it at any time, and the only use I saw it put to was to use it as a seat by some persons who got tired.

Cross-examined, p. 304:

Q. How many days before election did you see it?—A. I think several days. I may be mistaken. When it was used it was generally left where last fired; its being near the polls was an accident. It was the intention to open the poll on another street, but this idea was abandoned day before election.

See also testimony of the town marshal, p. 310, and that of the sheriff, pp. 312-314.

It is, of course, impossible to reproduce all the testimony here, and the bulk of the record precludes the hope that the committee will be able to give the whole of it any very careful examination and analysis. The foregoing review of it, however, makes it perfectly clear, we think, that the Republican supervisor at this precinct was afforded every reasonable facility for the performance of his duties; that the crowded condition of the polls was due wholly to the unnecessary and unreasonable massing of Republicans at this precinct, and that it was not accompanied by any discrimination in favor of Democratic voters; that instead of retarding the casting of ballots, the number of votes received prove the managers to have been, under all the circumstances, remarkably expeditious; that the amount of violence shown is small for a heated election and an overcrowded poll, and that no part of what violence there was is either proved to have been committed by Democrats or shown to have damaged the contestant; that the display of fire-arms complained of was not only a justifiable but an exceedingly temperate and commendable proceeding upon the part of the proper officers to suppress a most disgraceful riot inaugurated and conducted by the adherents of the contestant, and carried to the extent of resisting and bodily assaulting the sheriff of the county while in the discharge of his duty; and that the cannon referred to in the notice of contest and in the testimony was left in the vicinity of the polls innocently, after being used in a procession the night before, and without either the purpose or the effect of intimidating anybody, or preventing the casting of a single vote for the contestant.

The review to the testimony as to this precinct has been made so

elaborate solely because of the grave character of the charges made against it, and not because of its importance upon the result of the election. The witness Major claims that about three hundred Republicans were prevented from voting by reason of the crowd; but the character and unreliability of Major's testimony has been sufficiently illustrated. Mr. Aldrich, at p. 301, testifies that at the closing of the polls there were only about seventy-five or one hundred men left at the entrance to the polls, and that among them he recognized some who had already voted; and Mr. Henderson's testimony (p. 282) is to the same effect. This estimate is corroborated by the following: Both Mr. Brayton (p. 164) and Sheriff Holley (p. 313) estimate the colored people around the poll that day at from 400 to 500, some of whom, however, Mr. Holley says, were Democrats. And of the Republicans the returns show that 383 voted; the remaining 75 or 100, if counted for contestant, would not affect the general result.

The precinct has uniformly been Democratic since 1876.

It only remains to add that not a man who was prevented by intimidation or violence of any kind at this precinct is either produced, named, or in any manner referred to. Yet at page 33 of the majority report contestee's majority here also is thrown out.

The extent to which the foregoing summary of the evidence relating to the two precincts of Edgefield Court-House and Aiken Court-House has drawn out this report illustrates the impossibility of anything like a fair review of the conflicting testimony as to the hundred or more precincts in the fifth Congressional district. We can only again refer to the full, and, we would add, very fair summary of and references to it contained in contestee's brief; to facilitate resort to which, for the purposes of fuller examination than can be here given, we append to this report an index of reference to the pages of the brief in question, in which, unlike the majority report, the testimony, not on one but on *both* sides is collated, and the pages of the record noted at which the full text of the depositions of *all* the witnesses will be found. In the opinion of the undersigned, the testimony of contestant's own witnesses will be found in nearly every instance, when fairly compared with itself, to furnish its own refutation, and to require slight aid from the testimony adduced on behalf of contestee to prove the groundlessness of the grave charges against the people of entire counties which are so recklessly made.

It remains to consider an assumption made, and mainly relied upon in the argument on behalf of contest, which, though utterly unsupported by the evidence, appears also to have passed into and to have formed the basis of the majority report, viz., the assumption that all the colored voters in the fifth Congressional district of South Carolina were adherents of the contestant. In his brief, in the argument before the second subcommittee on his behalf, and in the majority report, the census returns, showing a majority of colored voters in that district, is triumphantly appealed to as demonstrating the election of contestant, a process of reasoning which, if satisfactory, and if only thought of early enough, might well have saved the committee the labor of its deliberations, the country the expense of the contest, with its voluminous testimony, and, indeed, the people of the district the trouble of holding the election at all.

Upon this subject the fact is not only established clearly by the testimony taken on behalf of contestee, but conceded by contestant's own witnesses, that the sitting member was largely supported by colored voters throughout his district in the election of 1880. There is not a precinct in

any one of the five counties referred to in the testimony at which colored men are not proved to have voted for contestee; and that, too, in nearly every case by contestant's own witnesses. At Aiken Court-House about one hundred colored men voted the Democratic ticket (p. 314); at Page & Hankerson's Store a majority of the colored people who voted cast Democratic ballots (p. 273); at Meeting Street precinct 200 colored men voted with the Democrats (pp. 551-2); at Millet's, 65 (p. 641); at Baldnoch, 50 (p. 636), and so on throughout the district. In Barnwell County alone 1,372 colored men enrolled themselves in Democratic and affiliated clubs (p. 610); and at Allendale there were 225 in one club (p. 647). See also pp. 493, 576, 593, 644, 563-4, 63-4, 114, 116, 159, 216, 289, 295, 298, 301, 305, 508, 321-2, 328, 329, 482, 484, 487, 502, 518, 525, 557-8, 570, 580, 582, 623, 632, 637, 641, 644, &c.

One of these Democratic colored men was fired at on the day of election by a Republican at Allendale (p. 637); another was ambushed and killed on his way from the polls, at Lawtonville (571); while social and religious ostracism, threats, intimidation, and violence were resorted to throughout the district to overawe and coerce them. See pp. 317, 321, 330, 332, 555-6, 562-8, 578-80, 582, 591-2, 623, &c.

II.

Our associates of the subcommittee have figured out a majority of 1,489 for the contestant in the Congressional district, excluding entirely the vote of Edgefield County.

In their statement, however, there are two manifest errors which they must have overlooked, and which we think they will not hesitate to correct.

1. They give to the contestant the entire vote of 618 cast at Jacksonborough precinct, in Colleton County, before the poll there was closed. The testimony shows—and there is no conflict whatever upon this point—that at least 200 of these votes were cast for the contestee, and not more than 400 for the contestant. (Rec., 346.) We think it too plain for argument that this poll should not be counted at all, and that the managers and commissioners of election did right in not counting it. But assuming for the present that it ought to be counted, it should be at least counted correctly, 400 for the contestant and 200 for the contestee.

2. The whole vote of 276 at Horse Pen precinct, in the same county of Colleton, is likewise given to the contestant, when his only testimony in regard to it shows that it gave a Democratic majority of 20.

These are palpable mistakes, which we suppose our associates of the subcommittee will not hesitate to rectify, and which, if allowed, will reduce the contestant's majority to 775, on the theory of our associates.

Now, restoring the precincts of Silverton, Creed's Store, and Windsor, in Aiken County, which our associates have mistakenly excluded on the ground of violence and fraud, there will be added an aggregate of 852 votes for the contestee and 26 for the contestant, which will give the contestee a majority of 51 votes in the Congressional district, exclusive of Edgefield County and the disfranchised precincts in other counties.

Conceding that there may be differences of opinion in reference to various other precincts, the vote of Silverton, Creed's Store, and Windsor cannot justly be excluded upon any known principle of the law of evidence.

The vote of Silverton is excluded upon the testimony simply of a man who was not there during the day, but at Low Town Wells, and who merely passed by (not through) Silverton, and obviously knew nothing of the election there (Rec., p. 130). Creed's Store is excluded because of a personal difficulty that occurred there late in the afternoon of the day of election, notwithstanding that it is admitted by all the witnesses for the contestant that not a single vote, except that of one idiot challenged for cause, was lost to him at the precinct, either on account of the difficulty just mentioned or for any other cause (Rec., pp. 73, 182). And the precinct of Windsor is excluded because it appears that the Republican ticket-distributor left the place in a passion, on account of a personal difficulty, and took the Republican tickets with him.

It will be a disgrace to our system of government, a disgrace to our civilization, and a mockery of justice if whole communities are to be disfranchised upon such absurdly trivial grounds as these. As already stated, we do not think that our associates meant to do this; we think they have been mistaken or imposed upon.

We cannot concur in the exclusion of the entire vote of Edgefield County, as determined on by our associates. We do not see why it should have been singled out for punishment, when it is admitted by our associates themselves that there was no greater manifestation of violence and fraud here than in four other counties of the district, unless it be that Edgefield County gave the contestee his largest majority; and this being summarily disposed of, it is easier to figure upon the rest of the Congressional district.

The official vote of the county is 7,513, and the official majority for the contestee is 5,421. We think the committee should pause and weigh well the consequences before they nullify a majority like this. If the contestee is to lose the benefit of it, and of numerous precincts in other counties, aggregating one-third of the vote of the whole district, it would be much more just, unless some political exigency demands the contrary, to declare the whole election void and refer the contest back to the people than to seat a contestant who evidently did not receive a majority of the votes cast, and whom no member of the committee can believe to have been elected.

The contestant's witnesses testify to some excessive ballots in this county: At Landrum's Store, 76 (Record, p. 82); at Richardsonville, 7 (Rec., p. 213); at Edgefield Court-House, 15 (Rec., p. 247)—98 in all. There is no testimony tending to show which party was responsible for this excess, nor is there any pretense that the excessive votes were not fairly drawn out in accordance with the law. But assuming that all these excessive ballots were cast by Democrats, and that all the ballots drawn out were Republican, and that the returns should be corrected accordingly, we would still have 6,369 votes for Tillman and 1,144 for Smalls, or a majority in the county of 5,225 for the contestee.

Now, if it should be held that by reason of fraud and violence this vote cannot be held to show the true sentiment of the county, that the adherents of the contestant were prevented from voting for him, and that the contestee's apparent majority, therefore, should not avail him, yet the fact remains that the contestee had a majority of the *votes actually cast*; and in the face of such a majority to seat the contestant would be simply an outrage. The utmost that it would be proper to do under such circumstances would be to refer the election back to the people for a new determination of it.

Again, if it should be held that, by his failure to send up to the governor and secretary of state the poll-lists and precinct returns of the

several precincts, in accordance with the merely directory, and not mandatory, requirements of the law, the chairman of the board of county canvassers could destroy the reliability of the official statement of the election made by the board in its official character, and concurred in by all the members, including the Republican member of the board—a proposition which no amount of special pleading, confused argument, or violent declamation can successfully establish—it is nevertheless conceded that the contestee is entitled to the benefit of such votes in the county as are proved *aliunde* to have been cast for him. Outside of the certificate the record shows 986 votes in the county for the contestee and 15 for the contestant, as follows: At Edgefield Court-House, 763 votes for Tillman and 15 for Smalls (Rec., pp. 246–250); at Cheatham's Store, 3 votes for Tillman (Rec., p. 538); at Meeting Street, 200 colored votes for Tillman (Rec., p. 551); and at Red Hill, 20 colored votes for Tillman. To this vote, under the theory of our associates themselves, the contestee is entitled, as proved by the record, outside of the certificate; and upon this theory, without the votes of the precincts of Silverton, Creed's Store, and Windsor, to which reference has been made, taking into account the evident mistake of our associates as to Jacksonborough and Horse Pen, the contestee would still have a majority of 196 votes in the Congressional district, as follows:

| | Smalls. |
|---|-------------|
| Small's majority, as per majority report | 1,489 |
| Deduct Jacksonborough..... | 618 |
| Deduct Horse Pen..... | 276 |
| | <hr/> 894 |
| | 595 |
| Add Jacksonborough, Tillman..... | 200 |
| Add Horse Pen, Tillman..... | 20 |
| Add Edgefield County, Tillman..... | 986 |
| | 15 |
| | <hr/> 1,206 |
| Majority for Tillman, 196. | 400 |
| Restoring Silverton, Creed's Store, and Windsor, aggregating..... | 852 |
| | 26 |
| | <hr/> 2,058 |
| Majority for Tillman, 1,022. | 1,036 |

III.

In justice to the contestee, and to his counsel who prepared his brief, we are compelled to call attention to some grossly inaccurate statements in the report of our associates, which, though comparatively unimportant in themselves, serve to show with what little care our associates examined the questions before them.

On p. 49 it is said: "These facts are admitted with a boastful frankness on p. 83 of the contestee's brief." No such admission and no such boastful frankness appear on p. 83 or any other page of contestee's brief.

On p. 43 of the report it is said: "It is objected on behalf of the contestee that there is no notice of contest as to Barnwell precinct, in the county of Barnwell." No such objection was ever made in the contestee's brief or outside of it, as far as we are aware. On the contrary, on p. 87 of contestee's brief it is stated that "Barnwell Court-House is one of the precincts most frequently mentioned in the notice of contest."

These and numerous other conspicuous inaccuracies, for which there

is neither excuse nor justification, together with the grossly partisan and one-sided citations of testimony in which the report of our associates abounds, would strongly dictate the propriety of withdrawing and revising it. The action of our associates presents a dangerous precedent, which may react upon them. We find nothing in the record to authorize the unseating of the contestee.

We therefore recommend the adoption of the following resolutions:

1. *Resolved*, That Robert Smalls was not elected as a Representative to the Forty-seventh Congress of the United States from the fifth Congressional district of South Carolina, and is not entitled to occupy a seat as such.

2. *Resolved*, That George D. Tillman was duly elected as a Representative from the fifth Congressional district of South Carolina, and is entitled to retain his seat as such.

L. H. DAVIS.
S. W. MOULTON.
GIBSON ATHERTON.

SAMUEL LEE JOHN S. RICHARDSON.

FIRST CONGRESSIONAL DISTRICT OF SOUTH CAROLINA.

Contestant charges that fraud, violence, and intimidation were practiced on behalf of contestee; that false and fraudulent returns were made; that legal and proper returns were wrongfully rejected; that ballot-boxes were stuffed with tissue ballots in the interests of contestee: that no proper returns were made from Darlington and other precincts, but a large vote was counted from that precinct which should be rejected; and that United States supervisors of election were hindered and prevented from discharging their duties.

Held, that fraud, violence, and intimidation were practiced, and fraudulent returns were made, which must be corrected as the vote is proven to be.

That full effect must be given to returns which were unlawfully rejected.

The evidence is not sufficient to reject the return from Darlington precinct; besides there is no evidence in the record tending to show how the vote would then stand if the return was rejected.

[NOTE.—This case was reported to the House on February 24, 1883, and was under consideration when Congress expired by limitation March 3.]

FEBRUARY 24, 1883.—Mr. CALKINS, from the Committee on Elections, submitted the following

R E P O R T :

The Committee on Elections, to whom was referred the contested-election case of Lee vs. Richardson, from first Congressional district of South Carolina, having had the same under consideration, beg leave to make the following report:

Mr. Pettibone, from the committee, has prepared an elaborate report, with which in the main I agree. There are some facts found to which I

do not assent, but they are not important enough to need extended notice. The main difference of opinion is with reference to Darlington precinct. At that precinct Richardson received 1,271 votes, and Lee received 117. I do not think the evidence is sufficient to reject this return; it is purely a question of evidence, and I cannot bring myself to believe that the evidence is sufficient to justify its rejection. There is no evidence in the record tending to prove how the vote would stand on the theory of contestant, if the return was rejected. I think the evidence with reference to this precinct fairly establishes two propositions, viz: First, that the colored voters, on the morning of election, in large numbers, took possession of the market-house where the elections were usually held. For some reason, not apparent, the poll was opened at the court-house, instead of the market-house, and the white voters at the opening took possession of it. Attempts were made by the colored voters, early in the day, to force their way to the box to vote, which seems to have been prevented by the white voters crowding the stairs leading to the box. This led to criminalization and recrimination and considerable confusion and excitement, and a rumor seems to have prevailed among the colored voters that several stands of arms had been brought to the town the night before the election by the white Democrats, and that they were concealed in the court-house and in Earley's store. Whether this was so or not is immaterial in the view which I have taken of the testimony. There was no physical display of the guns on the day of election, and I find as a matter of fact that probably as early as ten o'clock, and certainly not later than eleven o'clock on the day of election the colored voters, under the advice of one Smith, who was a leader and man of influence among them, dispersed and did not attempt again to vote on that day at that poll. The danger of bodily harm was not sufficiently imminent to warrant this course, and there was an entire lack of diligence on the part of these voters to maintain their right to vote. As a matter of law these voters had a right to vote at any precinct in the county; there was another voting precinct not many miles from Darlington, and there is no reason given why they might not have voted at that precinct if they were driven away from Darlington. For these and other reasons I am persuaded that Darlington should remain, and therefore submit the following resolutions, in which a majority of the committee concur:

Resolved, That Samuel Lee have leave to withdraw his papers, and this case is dismissed without prejudice.

VIEWS OF THE MINORITY.

Held, That Darlington precinct should be rejected, and Lee be declared elected by 284 votes.

Mr. PETTIBONE, from the Committee on Elections, submitted the following

REPORT:

The Committee on Elections, to whom was referred the contested-election case of the first Congressional district of South Carolina, having had the same under consideration, beg leave to report:

The district is composed of the counties of Georgetown, Sumter, Williamsburg, Horry, Darlington, Marlboro', Marion, and Chesterfield.

The returns of the State board of canvassers give to—

| | |
|-------------------------------|--------|
| John S. Richardson..... | 20,142 |
| Samuel Lee..... | 11,674 |
| Majority for Richardson | 8,468 |

The contest was begun by the contestant, Samuel Lee, against the sitting member, John S. Richardson, and in his notice of contest he alleges the following grounds:

1st. That a majority of the legal votes polled at the election held on the 2d day of November, 1880, in the first Congressional district of South Carolina were cast for me.

2d. That owing to frauds, violence, and intimidation, committed in your interest by your partisans and supporters in each and every county in the Congressional district, the true result of the election was defeated, and a pretended and fraudulent majority made to appear for you.

3d. That the returns made to the State board of canvassers by the commissioners of elections of Sumter, Williamsburg, Georgetown, and Horry Counties do not contain true and correct statements of the votes cast for a member of Congress in said counties.

4th. That according to the returns of the election made by the managers of election of the several voting precincts in the counties of Sumter, Williamsburg, and Georgetown I received a majority of the votes cast in each of the said counties.

5th. That in Sumter County the commissioners of election illegally refused to count and canvass and include in their statement of the result of the election the vote cast, canvassed, and duly returned for a member of Congress at the following voting precincts, to wit: Sumter No. 1, Carter's Crossing, and Rafting Creek.

6th. That in Williamsburg County the commissioners of election illegally refused to count and canvass and include in their statement of the result of the election the vote cast, canvassed, and duly returned for a member of Congress at the following voting precincts, to wit: Salters, Gourdins, and Midway.

7th. That in Georgetown County the commissioners of election illegally refused to count and canvass and include in their statement of the result of the election the vote cast, canvassed, and duly returned for a member of Congress at the following voting precincts, to wit: Upper Waccamaw, Lower Waccamaw, Santee, Sampit, Choppee, and Pee Dee or Birdfield.

8th. That in Horry County the commissioners of election illegally refused to count and canvass and include in their statement of the result of the election the vote cast, canvassed, and duly returned for a member of Congress at the voting precinct of Martin Hill.

9th. That in Sumter, Williamsburg, and Georgetown Counties, at the following voting precincts, to wit: Lynchburg, Mayesville, Shiloh, and Privateer, in the county of Sumter, and Kingtree, Gourdins, Black Mingo, Greelyville, Salters, Cedar Swamp, Prospect Church, Pipkins, Andersons, Scranton, and Grahams, in the county of Williamsburg, and Georgetown, Upper Waccamaw, Sampit, and Carver's Bay, in the county of Georgetown, the vote actually cast for me was larger and the vote actually cast for you was smaller than appears on the face of the returns made by the managers of election at the voting precinct aforesaid; that the difference between the vote as actually cast and the vote as returned by the managers aforesaid arises from the fact that at each of the aforesaid polls numerous ballots bearing your name for Congress were fraudulently placed in the ballot-box for the purpose of creating an excess of votes over voters, and thereby compelling the managers to draw out and destroy the excess of ballots thus created, in order to reduce the number of ballots in the box to the number of names on the poll-list; that in drawing out of the box at each poll the excess of ballots fraudulently created as aforesaid numerous ballots bearing my name for Congress, and which had been legally voted, were drawn out and destroyed and in their place was counted a corresponding number of ballots with your name for Congress thereon, which had not been legally voted; wherefore, to the vote returned for me by the managers of election at each of the polls aforesaid should be added the ballots bearing my name for Congress which were drawn out and destroyed, and from the vote returned for you at each of the polls aforesaid should be deducted a corresponding number.

10th. That in Marion, Marlboro', and Chesterfield Counties, at the following voting precincts, to wit: Marion Court-House, Berry's Cross-Roads, Campbell's Bridge, Little Rock, Friendship, High Hill, Mt. Nebo, Marsbluff, Arieal, and Stones, in the county of Marion, and Bennettsville, Smithville, Adamsville, Brownsville, Brightsville, Hebron, Clio, Red Bluff, and Red Hill, in the county of Marlboro', and Chesterfield Court-House, Mt. Croghan, and Hebron Church in the county of Chesterfield, for the causes set forth in the preceding paragraph (No. 9) the vote actually cast for me was

larger and the vote actually cast for you was smaller than appears on the face of the returns made by the managers of election at the voting precincts aforesaid; wherefore, to the vote returned for me by the managers of election at each of the polls aforesaid should be added the ballots bearing my name which were drawn out and destroyed, and from the vote returned for you at each of the polls aforesaid should be deducted a corresponding number.

11th. That the polls required by law to be held at Stateburg, in Sumter County, and at Griers, in Georgetown County, were not opened, because the managers of election, who were your partisans and supporters, and members of the political party whose nominee you were for Congress, neglected and refused to act, in consequence of which numerous voters who went to said polls for the purpose of casting their ballots for me for Congress were deprived of the opportunity to vote for me for Congress, as they intended and desired.

12th. That at Black River or Brown's Ferry voting precinct, in Georgetown County, 276 votes were cast for me and 20 votes were cast for you; that at the close of the poll upon opening the ballot-box and counting the votes therein, the managers found that there were 602 tickets in the box; that this excess of 306 ballots was caused by your partisans and supporters fraudulently placing in the ballot-box that number of small tissue-ballots bearing your name for Congress; that when it was ascertained that the ballot-box had been stuffed as aforesaid, a controversy arose between the U. S. supervisors and the managers as to the duty of the latter under the circumstances, and not being able to agree the managers sealed up the box and delivered the same to one of the supervisors without making a canvass and return of the votes required by law; wherefore, the vote cast as aforesaid at said precinct should be added to the vote returned for you and for me, respectively, by the commissioners of election of Georgetown County, to wit, 20 for you and 276 for me.

13th. That at Cheraw voting precinct, in Chesterfield County, the poll-list kept by the managers of election and their clerk was falsified in your interest by the insertion thereon of 116 fictitious names, and for the names thus fraudulently placed on the poll-list a number of ballots bearing your name for Congress were surreptitiously placed in the ballot-box and counted, canvassed, and returned for you; wherefore from the vote returned for you at said precinct should be deducted the number of ballots so illegally counted, canvassed, and returned for you.

14th. That at each and every voting precinct in the counties of Chesterfield, Horry, Marlboro', Williamburg, Darlington, and Marion numerous illegal votes were cast for you by persons not qualified to vote and by persons who voted more than once.

15th. That at each and every precinct in the counties comprising the first Congressional district a large number of colored voters who desired and intended to vote for me for Congress were denied that right, without good and sufficient cause, by the managers of election.

16th. That throughout the Congressional district the supervisors appointed by the circuit court of the United States to represent the Republican party, whose nominee for Congress I was, and the deputy marshals of the United States were obstructed, hindered, and prevented by your partisans and supporters from fully and freely performing the duties required of them by the laws of the United States.

17th. That at each and every voting precinct in the eight counties comprising the first Congressional district all the managers of the election were known to be your political partisans and supporters, and members of the political party whose candidate for Congress you were; that in the reception and rejection of votes and in the general management and conduct of the election the managers of election aforesaid at each and every poll acted in your interest and for your benefit; that at each and every precinct where there was an excess of ballots in the box the managers of election as aforesaid in drawing out such excess acted in your interest, manipulating the ballots in such a way as to draw out mostly tickets with my name for Congress thereon.

18th. That in Darlington County there was not a free and fair election, owing, first, to the repeating, illegal voting, and ballot-box stuffing, which was committed in your interest and by your partisans and supporters at each and every voting precinct in the county; second, at Darlington Court-House poll, Florence, Effingham, James Cross-Roads, Gum Branch, and Timmonsville, by the poll-list being falsified by the insertion thereon of fictitious names, repeating, violence, intimidation, illegal voting, and by the rejection of a large number of qualified voters who desired and offered to vote for me for Congress; wherefore the entire vote returned as having been cast at each of the above-named polling precincts should be rejected and entirely excluded.

19th. That in Darlington County, at the following voting precincts, to wit, Effingham, James Cross-Roads, Gum Branch, Timmonsville, Lisbon, Lydia, Society Hill, Leavenworth, and Mechanicsville, for the causes set forth in paragraph No. 9, the vote actually cast for me was larger, and the vote actually cast for you was smaller, than appears on the face of the returns made by the managers of election at the voting precincts aforesaid; wherefore, to the vote returned for me by the managers

of election at each of the polls aforesaid should be added the ballots bearing my name which were drawn out and destroyed, and from the vote returned for you at each of the polls aforesaid should be deducted a corresponding number.

20th. That at Graham's Cross-Roads, Scranton, and Cedar Swamp, in Williamsburg County, the ballot-boxes were stuffed, the poll-lists falsified by the insertion thereon of fictitious names, violence, intimidation, repeating, and illegal voting committed in your interest and by your partisans and supporters, to such an extent that it is impossible to tell how many legal votes were cast at said voting precincts; wherefore the entire vote returned as having been cast at said polls should be rejected and entirely excluded.

To the notice of contest the sitting member filed exceptions and answers as follows:

SIR: In reply to your notice of intention to contest my seat in the Forty-seventh Congress of the United States as a member from the first district of the State of South Carolina, served on me on the 20th day of December, 1880, I have to say—

I. That I deny and except to your right to contest my seat, either in your own behalf or in the interest of the voters of the first Congressional district of the State of South Carolina, for the reason that you were not at the time of the general election of the 2d of November, 1880, either a legal voter or a citizen of the said district or State.

I allege that two years previous to said election, with the intention of removing from South Carolina, you sold whatever property you owned in South Carolina and removed with your family beyond the borders of said State, and returned to the said State less than twelve months previous to said election.

II. I object and except to your notice so far as you charge force and intimidation on the part of my supporters, because you do not specify, as the law and practice require, or pretend to specify, a single instance of force or intimidation committed by any of my supporters anywhere in the Congressional district on any of the voters of said district. Nowhere in your notice do you state who was forced to vote for me, or who was intimidated by my supporters and prevented from voting for you, or in what manner, place, or town such intimidation was had, or by whom it was done.

III. Because your specifications of grounds of contest are insufficient in law, and do not set forth facts sufficient or of such a character as to enable you to contest my right to said seat. And not waiving my aforesaid exceptions, but expressly reserving and relying on the same, I do hereby expressly deny, on information and belief, all the charges and allegations in your said notice contained and set forth, and require you to prove the same, except as hereinafter admitted.

To the first ground of your contest I deny the same, and each and every allegation therein contained. On the contrary, I allege that my official majority, as found by the State board of canvassers for the State of South Carolina, was eight thousand four hundred and sixty-eight.

To the second ground of your contest I deny the same, and each and every allegation therein contained.

To the third and fourth grounds of your contest I object, and except to them as indefinite and insufficient in law. If true, as alleged by you, they do not show or allege that I am not entitled to said seat, or that you are; and they do not state how or wherein the said returns are not true and correct, or what would be your majority in said counties if the said returns were corrected as claimed by you. In reference to your allegation in said third ground of contest, while I do not admit it, because I do not know it to be true, but, on the contrary, require you to prove it, I claim and allege, if true, as alleged by you, I would still have a large majority of the votes cast at said election, and be entitled to said seat.

In reference to the fourth ground of your contest, I answer that I believe it is true, as alleged by you therein, that a majority of the votes cast in said counties of Sumter, Williamsburg, and Georgetown were cast for you, but I object and except to your specification as indefinite and insufficient in law. It does not state what returns; from what voting precincts; how or wherein the said returns are not true or correct, or what would be your majorities in said counties; and I expressly and emphatically deny that you would, if your said allegations were true, thereby or by reason of anything alleged in said third and fourth grounds of contest, have a majority of the votes cast in said district, or be entitled to said seat.

To the fifth ground of your contest, I answer that I do not know or admit that in Sumter County the commissioners of elections *illegally* refused to count and include in their statement the votes cast and returned at Sumter precinct No. 1, Carter's Crossing, and Rafting Creek. I admit that the votes cast at said voting precincts were refused and excluded. As to the votes cast at Sumter precinct No. 1, I waive the question as to whether the same were legally or illegally refused and excluded by said commissioners, and agree that the same may be counted. And I allege and claim if they be counted, I would still have a large majority of all the votes cast in said district. As to the votes cast at Carter's Crossing and Rafting Creek, I deny, on

information and belief, that they were illegally refused and excluded from the said statement, and I allege and claim, if they be counted, I would still have a large majority of all the votes cast in said election.

To your sixth, seventh, eighth, ninth, and tenth grounds of contest, on information and belief, I deny the same and each and every allegation therein contained.

As to so much of the allegation contained in your ninth ground of contest as alleges that there is such a voting precinct as Mayesville in Sumter County, I deny the same; and though I received a majority of the votes polled at said supposed precinct, I allege that there is no such voting precinct established by law, and ask that the vote returned and counted from said supposed voting precinct be excluded.

To your eleventh ground of contest, on information and belief, I deny that the poll at Stateburg, in Sumter County, and at Grier's, in Georgetown County, were not opened. I deny that said polls were not held because the managers neglected or refused to act. I deny that because said polls were not held numerous voters who desired to vote for you were thereby deprived of the opportunity to vote for you.

On the contrary, on information and belief, I allege that the poll at Grier's, in Georgetown County, was held, and I charge and allege that your partisans and supporters, with force and arms, took from the possession of the managers of said poll the box containing the ballots cast for a member to Congress and carried off the same, refusing to allow the said managers to count the ballots and ascertain the result. And I further allege that no one was prevented from voting for you who desired to do so, by anything that was done at either of said voting precincts by my partisans and supporters, or by the managers at said precincts.

To your twelfth ground of contest, on information and belief, I deny the same, and each and every allegation therein contained; and I charge and allege, on information and belief, that your partisans and supporters, with force and arms, took from the possession of the managers of said Black River or Brown's Ferry precinct the box containing the ballots cast at said voting precinct, and refused to allow the same to be counted by the managers, as by law required to be done.

To your thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, and twentieth grounds of contest, on information and belief, I deny the same, and each and every allegation therein contained. As to your seventeenth ground of contest, and all other grounds where similar allegations are made by you, I charge and allege that the managers of the election were appointed, and the purging of the ballot-boxes, where the same was found to be required by law, was done in strict accordance with the laws of South Carolina governing in such cases, and that said laws were framed and passed by the political party of which you are a member, and the appointment of said managers and the purging of the boxes were done in strict accordance with the practice adopted and acted on by the party of which you are a member when said party were in power in South Carolina. I further charge and allege that the party to which I belong have not altered, amended, or repealed the said laws in one iota.

As to so much of your allegation contained in your eighteenth and nineteenth grounds of contest as alleges that there is such a voting precinct as James Cross-Roads in Darlington County, I deny the same, or that there was any vote polled at or counted from any such voting precinct.

The undersigned alleges and charges that there is no such voting precinct established by law as Mount Clio, in Sumter County, and claims that the vote counted and canvassed as polled at said supposed voting precinct should be excluded.

The undersigned further denies that if the irregularities alleged by you to have been committed did occur (of which he has no knowledge or information), they were of a character in any degree to affect or invalidate his true and lawful election. On the contrary he alleges and claims that, counting the entire vote polled at every voting precinct in the Congressional district, and accepting the returns made by the Republican supervisors, wherever they made returns, as to the number of such votes and the persons for whom they were cast, the contestee received a large majority of all the votes cast for a member of Congress from the first district of the State of South Carolina at the election held for such member on the second day of November, 1880.

While the undersigned denies that there was any "force or intimidation" whatever used or practiced anywhere in the Congressional district by his partisans and supporters, he alleges and charges that there was great force, undue influence, violence, and intimidation practiced by you and your partisans and supporters upon and over a large number of colored voters who desired to vote for him, and who in consequence of such force, violence, undue influence, and intimidation were prevented from voting for him, and forced by fear of violence and injury to their persons or property to vote against their wishes for you. That this was notably the case at each and every voting precinct in the counties of Sumter, Williamsburg, and Georgetown. That to render this intimidation more complete and effectual you and your partisans and supporters caused large numbers of the colored people to be formed into clubs, and appointed captains over them, who were charged to march their squads in a body

to the polls, and there see that they voted the Republican ticket. That you and your partisans did so officer them and march them in squads to the polls, and by such means massed large bodies of colored voters at certain polls, thereby crowding out Democratic voters, and preventing them from voting thereat, and thereby overawed, intimidated, and forced many colored voters to vote the Republican ticket who desired to vote the Democratic ticket. That you and your partisans and supporters procured certain little blank books, which you and your partisans and supporters caused to be placed in the hands of certain of your partisans and supporters, and gave out that these books were furnished by the United States authorities, or by the National Republican party who were in authority for the purpose of entering therein the names of all colored men who voted the Republican ticket, to be returned to the said authorities as evidence that they had so voted.

The undersigned further alleges and charges that you intimidated a large number of colored voters and prevented them from voting for contestee by procuring yourself to be appointed a United States deputy marshal, and acting as such in the interest of your own election. That you and your partisans and supporters procured the appointment of a large number of special deputy marshals, whom you and your partisans and supporters caused to be stationed at each and every poll in the Congressional district without warrant of law, there being no city or town in the district of twenty thousand inhabitants. That these deputy United States marshals had displayed on their persons the badges of their authority obtained from the United States authorities, and were active partisans and supporters of yourself, overawing and forcing many colored voters to vote for you who would otherwise have voted for him.

The undersigned further alleges and charges that in order the more effectually to intimidate and force the colored voters to vote for you, you caused your name as a candidate for member of Congress to be printed on a thick, stiff, and striped-back card, easily discerned at a considerable distance, thereby seeking to prevent, and in a great many instances did prevent, the colored voters from voting a secret ballot, as is contemplated by the law. That many of these colored voters desired to vote the Democratic ticket on which contestee's name was printed as a candidate, and would have done so could they have voted it without its being known to your partisans and supporters for whom they voted. That many colored voters actually came to the friends and supporters of the undersigned and stated that they intended and desired to vote the Democratic ticket, but could not do so, for fear of your partisans and supporters, unless the Democratic ticket could be pasted on the inside of your striped-back ticket, and these—when this device was resorted to to shield and protect them against the violence and intimidation of your partisans—voted the Democratic ticket.

The undersigned alleges and charges that your partisans and supporters armed themselves with guns and pistols, openly displayed on their persons, and went to the polls so armed and equipped, and there threatened and intimidated many colored voters who intended and desired to vote the Democratic ticket, and prevented them from so doing; that this was so done at each and every voting precinct in the counties of Georgetown and Williamsburg, and at Sumter Court-House, Carter's Crossing, and Rafting Creek, in Sumter County.

The issues between the parties are so clearly set out in their pleadings that little comment thereon is needed.

We therefore proceed to examine the case according to the testimony found in the record, and the law applicable thereto.

GEORGETOWN COUNTY.

It is agreed (Richardson's brief, Record, p. 92) by both contestant and contestee that *all* the vote of Georgetown County was rejected by both the county and State board of canvassers save one poll, to wit, Georgetown poll—that is, viz, Santee, Sampit, Upper Waccamaw, Lower Waccamaw, Carver's Bay, Choppee, Pedee, and Brown's Ferry, eight precincts thrown out and Grier's not held.

The "official returns" give to Lee 617 votes; to Richardson 302 votes for the *whole* county; total, 919 votes. Thus giving to Mr. Lee a majority of 315 only.

But Mr. Richardson admits (brief, p. 10) that the total vote in 1876 in the same county was 3,836, almost four times as much as in 1880, and this is explained because of the throwing out of the eight precincts. Were these eight precincts, or any of them, improperly thrown out?

But, first, as to Georgetown poll. It appears from the Record, page 788 (B. H. Williams), and is not contradicted, that at Georgetown poll 923 votes were cast; 1,092 were found in the box, 169 more than there were voters (H. T. Herriott, Record, p. 817), and these were Democratic tissue ballots, and all for Richardson. Instead of rejecting these 169 tissue ballots the *managers*, *all Democrats*, returned *all* the tickets to the box and then withdrew 169 tickets and destroyed them (Record, 798), but *not one tissue ballot* is shown to have been withdrawn. Other *honest* ballots, which were honestly cast, were withdrawn and destroyed. All the tissue ballots were counted for Richardson; 112 honest Lee ballots and 57 honest Richardson ballots were withdrawn and destroyed.

Thus Richardson got 169 more votes than he was entitled to and 57 less; but his vote was increased 112 by the fraud and Lee's decreased 112 by the same fraud, and it was so counted in the make up of Richardson's assumed majority. Thus, as Richardson got by this fraud 112 more than he was entitled to and Lee 112 less, the difference is 224. And manifestly if there was no other fraud Richardson's majority is too great by 224 votes, and Lee's true majority at Georgetown poll was 539 in place of only 315.

Santee Poll.

At Santee an honest election was held; 501 persons voted as shown by the poll-list, and 501 ballots were found in the box. (J. B. Lloyd, Record, 804.) Two votes were only for Presidential electors; 449 votes were cast for Representatives in Congress, and of these Lee received 476 and Richardson 23, showing a clear majority for Lee of 453. But this poll was rejected, not because there was any fraud or any pretended fraud, but as J. W. Tarbox, the Democrat chairman of the county board of commissioners swears (Record, p. 797), "We threw out the Santee box because the box was sent without a written certificate authorizing the bearer to deliver it." But that the election was an honest one, and that Lee received 453 majority, is uncontradicted and unquestioned.

Sampit.

This precinct was rejected by the same board of commissioners for the same reason, because "the box was sent without a written certificate authorizing the bearer to deliver it."

At this precinct 437 ballots, as is shown by the poll-list, of which 432 were for Congress. (H. T. Johnson, Record, p. 815.) The poll-lists kept by the two supervisors agreed; 495 ballots were found in the box when it was opened.

Now, somebody committed a fraud by placing 58 fraudulent ballots in that box. Two of the managers were Democrats and one a Republican. Twenty "little jokers," tissue ballots, were found inclosed in another ballot. The managers destroyed the 20 tissue ballots and returned to the box the ballot inclosing them.

Four Democratic ballots were found with one or *more* Democratic ballots folded within them. These inclosed ballots were destroyed, and *then* an excess of 37 ballots was still found. Then the managers drew from the box, in strict accord with the law of South Carolina, 37 ballots; 18 were Republican and 19 were Democratic. The withdrawal was as fair as could possibly be. But the fraud practiced, it is as clear as sunlight, was a Democratic fraud; yet this ballot-box was rejected, *not* because of the fraud, but on a purely technical ground. Mr. Lee, as both the Republican and Democratic supervisors, who were present,

saw and reported the result, *swear* (Record, p. 816), got 256 votes and Mr. Richardson 176, a clear majority for Mr. Lee of 80 votes, as shown by the managers' returns. But Richardson got 18 more votes than he was entitled to and Lee 18 less, because 18 "tissue ballots" were counted for Richardson in place of 18 honest votes for Lee withdrawn from the box, and then 36 votes should be added to Lee's vote, and his majority is honestly 116 at this precinct.

Upper Waccamaw.

This precinct was rejected by the Democratic county commissioners for the same reasons—purely technical. The managers who held the election were *all Democrats* (Record, p. 810). They were Mr. Richardson's political friends, and ought to have seen that no fraud was perpetrated, as against him at least. But Bently Weston and R. F. Johnson, the two supervisors, one a Democrat and one a Republican, reported (Record, p. 814), and Johnson *swears*, that there were 432 names on the poll-list; that an excess of 50 ballots were found in the box. This excess was drawn out and destroyed by a Democratic manager, but by a singular perversity of fate 48 of the ballots were Republican and only *two* Democratic! And, as a specimen, let the following testimony of R. F. Johnson show:

Question. How many, if any, Democratic ballots were found together in one at the counting of the ballots at the close of the poll?—Answer. Twelve in one.

After this manipulation the Democratic managers gave to Mr. Lee 341 votes and to Mr. Richardson 90, which gave Mr. Lee 251 majority, and *this* was rejected by the Democratic county commissioners and utterly cast away.

Reversing this process of gross and palpable fraud, even the Democratic managers, whose business it was to see justice done, admitted and certified to a majority for Mr. Lee of 251, and remembering that 48 honest votes given to Mr. Lee were drawn out and 48 votes *not* honestly given to Mr. Richardson were left in the box, thus taking from Lee 48 votes which belonged to him and adding to Mr. Richardson's vote 48 votes which did not belong to him, Mr. Lee's vote is swelled to 341 plus 48, which makes 389, and Mr. Richardson's is 90 less 48, which gives him 42 votes; and this clearly gives Mr. Lee at this poll a majority of 347 votes, instead of 251.

Lower Waccamaw.

The poll at this precinct was rejected for the same flimsy reason. There is no dispute between the parties as to the vote actually cast. Two of the managers were Democrats and one Republican (Record, page 824). An honest election was had here; the vote was 250 for Lee and 45 for Richardson. This fact is utterly unquestioned. This gave Lee 205 majority. Let us in conscience so count it.

Carver's Bay.

The managers here were *all Democrats* (Record, 820). The poll-list, kept by these Democratic managers and by the Republican supervisor, both agree that only 283 votes were cast; 377 votes were found in the box when the same was opened. (Record, p. 820, R. B. Anderson.) The box was in the hands and under the control of the Democratic managers. A fraud gross and palpable was perpetrated—94 fraudulent votes were found in the box. In one ballot *twenty-three* Democratic ballots were found inclosed, and also "tissue ballots" were found professing to be Republican ballots, by having the honored names of Gar-

field and Arthur at the top; and then a lot of names of persons as electors who were not running; and then the name of Mr. Richardson as the Republican (?) candidate for Congress. Within one ballot alone 31 of these doubly fraudulent ballots were found. These 23 Democratic and 31 "so-called" Republican tissue ballots, but all having the name of Mr. Richardson as a candidate, and the one which inclosed the 23, were destroyed; thus 55 fraudulent votes out of 94 fraudulent votes were destroyed by the managers. But 39 fraudulent votes were returned to the box; of this number was drawn out 19 Republican and 20 Democratic. The drawing out was as fair as fair could be. And the managers returned 183 for Richardson and 97 for Lee. (R. B. Anderson, Record, pp. 820-'21.) This gave Richardson 86 majority. But the facts show the fraud was a Democratic fraud. The fraud was in favor of Mr. Richardson. Nineteen Republican votes were drawn out which were honestly cast. In their place 19 fraudulent votes were left in the box and counted for Mr. Richardson. He got 19 more votes than he was entitled to, and Lee 19 less. The difference is 38. Subtract this from Richardson's certified majority of 86; lessen it by 38, and his true majority was only 48.

And this would give a difference of 38 votes in favor of Lee over that certified to by the managers.

Choppee.

This poll was thrown out for the same alleged reason above set forth as in the case of Sampit. (Record, p. 797.) The undisputed vote cast was 238. That number of ballots were found in the box. The managers were all Democrats, but they show in this return that the honest vote cast was 197 for Lee, and for Mr. Richardson 41. This gives a majority for Lee of 156. (E. J. Greggs, Record, p. 823.) This result is undisputed; it should be so counted.

Peedee.

Here the managers were all Democrats. Their returns and the United States supervisors testify to the same result. The vote stood 469 for Lee and 33 for Richardson, giving a majority for Lee of 436. This is not questioned or disputed. It was thrown out by the county commissioners for the same technical reason as Choppee and the balance. (Record, p. 797.) We cannot so report; because the messenger was not authorized to carry up the returns in writing we cannot reject the entire poll!

Brown's Ferry or Black River Precinct.

At this precinct it appears to be admitted that a reasonably fair election was held. That is, every voter was permitted to vote as he chose. The poll-list of the managers showed (Record, p. 800) that 296 votes were cast, and the names of the voters are given. But when the box was opened 602 ballots were found in that box. All the managers were Democrats. (See Record, p. 790-'2.) To show how these ballots were found in the box, the testimony of Joseph Dunmore, a United States supervisor, is sufficient. We quote (Record, p. 794):

Q. Where in the box, in what quantities, and in what condition were these tickets found?—A. About the middle of the box, inside of a larger Democratic ticket, in quantities of 10 or 12.

Q. How many of these packages were found together in the box?—A. Five or six.

He also swears that "at the corner bottom of the box a large number of these tickets were found." It appears that the voters were very much excited, as we think American citizens ought to have been—

When they found that the managers attempted to throw the ballots found folded together back into the box and count them. (Record, p. 790.)

The witness Dunmore being asked why he objected to counting these five or six parcels of fraudulent tickets, answered, "Because they refused to destroy all but one (as the law required), but attempted to put them back in the box and count them." Isaiah James McCottru (Record, p. 810) swears that 201 Republican votes were cast and 95 Democratic. In this he is corroborated by Joseph Dunmore, the United States supervisor. A great excitement naturally prevailed. A monstrous fraud was about to be perpetrated before their eyes. Joseph Dunmore swears, page 792, that Mr. Montgomery, one of the managers, suggested "to throw the whole box in the fire." In this he showed his thorough impartiality (?), the Republicans being largely in the majority. The Democratic United States supervisor said, "No; throw them in Black River, as it was a fraud, and he would not stand and see them counted." All the tickets were placed back in the box, tissue ballots and all, and the box locked and delivered to Joseph Dunmore (Record, 792), who next day offered the box and the contents to J. W. Tarbox, the chairman of the county commissioners of election, who would not receive it. The said box was by Dunmore transmitted to the Committee on Elections, and is now in the custody of the clerk of said committee. But as the names on the poll-list are printed in the Record, page 800, and the number not disputed, and as the proof is clear that 95 were Democratic votes and 201 Republican, and as "nothing short of the *impossibility* of ascertaining for whom the majority of the votes were given ought to vacate an election" (McCrary on Elections, 230), we are constrained to count 95 votes for Richardson and 201 for Lee, since the witness McCottru swears he observed the Republican ticket voted (page 810) bore the name of Samuel Lee for Congress, and this would give Mr. Lee 106 majority at this poll.

The result of this analysis shows that in Georgetown County, by the record evidence, enormous frauds were perpetrated; that looking to the uncontradicted evidence as to the votes actually cast by the legal voters, the vote honestly cast was as follows:

Vote of Georgetown County.

| Precincts. | As returned to the State canvassers. | | As corrected by the com mittee. | |
|-------------------------------------|---|------|------------------------------------|-------|
| | Richardson. | Lee. | Richardson. | Lee. |
| Santee | | | 23 | 476 |
| Sampit | | | 158 | 274 |
| Upper Waccamaw | | | 42 | 389 |
| Lower Waccamaw | | | 45 | 259 |
| Carver's Bay | | | 164 | 116 |
| Choppee | | | 41 | 197 |
| Pee Dee | | | 33 | 409 |
| Grier's, no poll opened | | | | |
| Brown's Ferry, or Black River | | | 95 | 202 |
| Court-house precinct..... | 302 | 617 | 190 | 729 |
| | | | 791 | 3,101 |
| Lee's majority..... | | | | 2,310 |

This gives a gross majority in Georgetown County to Lee of 2,310, in place of 315, as allowed by the board of State canvassers, and deducting the admitted majority from the *real* majority of Mr. Lee, shows beyond cavil that Mr. Lee was defrauded out of 1,995 honest votes in Georgetown County.

SUMTER COUNTY.

The board of State canvassers certify that Mr. Lee received in this county 1,789 votes, and Mr. Richardson 2,560 votes (see Record, p. 228). We analyze the vote of this county as follows:

Sumter Precinct No. 1.

Mr. Richardson, the contestee, in his answer to the notice of contest, on page 4 of the Record, uses the following language:

As to votes cast at Sumter precinct No. 1, I waive the question as to whether the same were legally or illegally refused and excluded by the commissioners, and agree that the same may be counted.

The proof shows that 1,499 votes were cast for Samuel Lee, and 9 votes for John S. Richardson. (Record, pp. 44 and 245.) Since Mr. Richardson admits this vote to be correct, we may safely count it that way. This gives Mr. Lee a clear majority at *Sumter precinct No. 1* of 1,490 votes.

The honesty of the contestee with regard to this precinct is certainly worthy of commendation; but what shall be said of, or what language can characterize, the partisan malignity of the commissioners who utterly ignored that poll?

Sumter Precinct No. 2.

At this poll, which was in the same town as Sumter precinct No. 1, and about 100 yards distant, the total vote cast for Richardson was 398; the vote cast for Lee was 91, making a total of 489 votes.

It appears clearly by the evidence that a great many voters tried to vote there who could not and did not. (See Record, pp. 29, 31, 38, 41, 256, 258, 259, 52, 53, and 54.) It must be apparent to the dullest capacity that if 1,508 honest votes, as Mr. Richardson admits, could be cast at Sumter No. 1 on the day of the election, the same number of votes might have been cast within the same hours at Sumter No. 2. The record shows that at Statesburg precinct, a neighboring voting place, no election was held. The managers at Statesburg were all Democrats; necessarily the voters of that precinct had to go to a neighboring precinct or not vote at all. They went to Sumter, and A. Johnson Andrews swears (see p. 42), "I saw about 400 to 500 Republicans leave town that day without voting." Other witnesses prove that Republican voters were prevented from going to that ballot-box. Men and boys stood in solid array in front of that ballot-box. Democrats had free access to the poll. One witness, B. Spears (see p. 30), swears as follows: "Every time I started I was pushed right back, but that colored men who had Democratic votes in their hands were given free passage."

Thomas R. Harney (Record, p. 32) swears that it was impossible for a colored Republican to vote at Sumter No. 2—

Because the stairway leading to the poll was crowded with white men and boys,

and when I attempted to go up I would be squeezed and mashed so that I would be injured by trying to get up there. I made three attempts to get up there, but failed each time.

C. J. Croghan swears (see p. 39):

Occasionally they let one in after sticking him with pins, abusing him, and cursing him, and telling him this was no damned Republican poll.

Alfred Davis (Record, p. 52) swears he attempted to vote. "I was prevented as I started up the steps; I was struck with knives everywhere." To the same effect is the testimony of Ancrum Slater, Ransom Dicks, Monday Bronson, and others (see pp. 46 to 54). From all this testimony it must be clear that no fair election was held at Sumter No. 2. The frauds which were committed were in favor of Mr. Richardson. Allowing them to stand, we pass to

Lynchburg Precinct.

The State board of canvassers report that Mr. Lee received 181 votes and Mr. Richardson 319 votes, making a total of 500 votes. (See Record, p. 227.) But 107 more ballots were found in the box than were actually cast by the voters. (See Record, pp. 25 and 27—James Levy and R. A. Wilson.) All the managers were Democrats. By the law of South Carolina, 107 ballots were drawn from the box and destroyed, and then the 500 ballots remaining were counted. This would have been exactly just if the 107 fraudulent ballots had been withdrawn, but they were not. The result, as stated by the board of State canvassers, was, as we have already seen, 181 for Mr. Lee and 319 for Mr. Richardson. But since it is evident that a gross fraud was perpetrated here, as in other precincts, by the ballot-box being stuffed, and since all the managers whose duty it was to see that the box was empty at the outset, and to see that a fair election was held, were the political friends of Mr. Richardson, it is difficult, not to say impossible, to believe that the fraud was perpetrated in favor of Mr. Lee.

We turn, therefore, to the positive testimony, and on page 61 of the Record a list is found of those who exhibited Republican ballots, and who voted the same.

This list shows that 242 votes were cast for Mr. Lee at Lynchburg precinct, and since the report of the board of State canvassers shows that 500 votes were cast for candidates for Congress, the true vote as actually cast was for Lee 242 and for Richardson 258, in place of for Lee 181 and for Richardson 319.

By the official returns Richardson received 138 majority; but in truth and in fact he received a majority of 16 votes only. (See testimony of James Levy, Record, pp. 25 and 61; also R. A. Wilson, p. 27.)

Now, it is clear that the 107 extra ballots found in the box were fraudulent. They must have been, for there were no voters behind them. Were they for Mr. Lee? The record is silent as to who they were for.

R. A. Wilson, United States supervisor, page 28, swears the managers would not let him see the tickets they destroyed. In this he is corroborated by J. A. Rhame. (Record, 671.)

Maysville Precinct.

At this precinct the State board of canvassers give to Mr. Lee 257 votes and to Mr. Richardson 274 votes. The total vote would thus be 531.

But the poll-list showed that 539 votes were cast, and there was found

in the box 760 ballots. It is thus manifest that there was a fraud perpetrated by stuffing the ballot-box with 221 fraudulent ballots. They *were Democratic ballots*. V. S. Johnson swears (Record, p. 19), that in not less than ten instances "there were quite a number of Democratic tickets folded together," and "the general appearance was that they were laid in there before the voting commenced, and had not been put through the hole in the lid"; and also swears that Mr. Wilson, one of the managers and the one who counted the tickets, stated that "the tickets were hatching in the box." Johnson also swears that he saw the tickets counted, and no Democratic tickets were pasted upon the checked-backed tickets voted by the Republicans, *and all the managers were Democrats*; and Mr. Cooper, one of the Democratic managers, declared that the bundle of Democratic tickets "could not have been voted in the box and have to be torn up." Mr. Johnson further swears that "there was one bundle which could not go through the hole in the lid." H. H. Wilson swears (p. 21) that he kept a book, which he produced, in which the names of the voters who voted the Republican ticket at that poll on that day were written down, and that 402 Republican votes were cast, upon which appeared the name of Samuel Lee for Congress. The names of all these voters are found in the Record on page 58 and following, as sworn to by the witness Wilson. Wilson swears he saw each of these persons deposit their tickets. (See Record, p. 22.) True it is that E. M. Cooper, one of the Democratic managers, swears, on page 698, that in his judgment Wilson could not know this fact, but it is evident that 221 fraudulent ballots were found in the box. They could not have been put through the small hole in the lid of the box. They must have been placed in the box before the poll was opened. *They were all Democratic tickets*. It is impossible to believe for an instant that it was a Republican fraud, since the whole advantage was in favor of Mr. Richardson and the Democratic party. It is clear as demonstration can be that it was a Democratic fraud. Under the law of South Carolina a number of ballots equal to the fraudulent Democratic excess was withdrawn from the box. It would have been *honest* if all of the fraudulent Democratic votes had been withdrawn, but the record shows they were not. Instead of this, 147 honest Republican votes and 74 dishonest Democratic votes were withdrawn. Since 147 honest Republican votes were withdrawn and destroyed, and 147 dishonest and fraudulent Democratic votes were left in the box and were dishonestly counted for Mr. Richardson, the fraud consisted in giving to Mr. Richardson 147 more votes than were actually cast for him and taking away 147 votes which were honestly cast for Mr. Lee.

We must correct the result as declared by the board of State canvassers by deducting from Mr. Richardson's certified vote 147 votes, and by adding to Mr. Lee's certified vote 147 votes. This will deduct 294 votes from Mr. Richardson's certified majority, and shows that the true vote at the Maysville precinct was 404 votes for Lee and 127 for Richardson, in place of 257 for Lee and 274 for Richardson. This shows that Mr. Lee's true majority at *Maysville* precinct was 277 in place of a majority of 17 votes for Richardson, as certified by the board of State canvassers.

Concord Precinct.

At this precinct it is claimed by Mr. Richardson, and conceded by Mr. Lee, that every honest vote cast was cast for Mr. Richardson. One hundred and fifty-two honest Democratic votes were cast at this poll.

The Republicans *refused* to vote, because they believed the ballot-box was already stuffed before the poll was opened. All who voted there voted the Democratic ticket. This is undeniable. (See Record, p. 54.) But, strange to say, when the box was opened a fraudulent excess of 41 ballots was found in the box. They were all Democratic tickets. As no Republicans voted, and not a single Republican ballot was found in the box, it would seem to be plain that *this* fraud was a Democratic fraud. The excess was properly rejected, but *Concord precinct* may fairly be held forth as a specimen of the frauds perpetrated in this district. The managers were *all* Democrats. Democrats alone voted. One of the managers, J. D. Wilder, testifies (Record, p. 692) that :

The Republicans refused to vote, and that an excess of 41 ballots were found in the box when the same was opened.

He further swears that he—

Did not see a single person who was recognized as a Republican voter at that poll.

The only explanation of the singular facts which stand out clear and apparent at Concord precinct poll is that a scheme had been formed and organized before the election came off to deliberately swindle Mr. Lee and the Republican party in the election in that district at that time. It is the only explanation a reasonable mind can offer or suggest why such a monstrous and patent fraud was perpetrated. And here we leave the consideration of the *Concord precinct*, with the consciousness of having exposed a fraud as novel as it is monstrous.

Privateer Precinct.

At this precinct a comparatively fair election was held. The managers were all Democrats (Record, p. 45). Seventeen Republicans only voted there, and 127 Democrats. But when the box was opened there was an excess of 120 ballots. That they were fraudulent no man can deny, since there were no voters to cast them. Under the law of South Carolina these 120 votes in excess had to be withdrawn from the ballot-box. They were Democratic votes. In withdrawing 120 votes, 10 of the honest 17 Republican votes that had been cast were withdrawn, and only 110 of the 120 dishonest, corrupt, and fraudulent Democratic votes were withdrawn. Believing that honest votes only ought to be counted, we must diminish the vote of Mr. Richardson by 10 votes, which are counted for him in his certified majority, but which were not cast for him by voters, and increase Mr. Lee's certified vote of 7 to the 17 votes actually cast for him, and this makes a difference of 20 votes which must be deducted in truth and all fairness from Mr. Richardson's certified majority. This makes Mr. Richardson's true vote 127 votes, in place of 137 votes. This result it would seem to be impossible to dispute.

Shiloh Precinct.

By the vote as declared by the State board of canvassers at Shiloh precinct, Mr. Lee received 143 votes, and Mr. Richardson 180 votes. This gives to Mr. Richardson a majority of 37 votes, but there was found an excess of 168 votes in the box. This was a palpable and glaring fraud. But it appears by the testimony of W. E. Boykin, page 28, that at least 189 votes were Republican, "and Samuel Lee's name was on every one of them"; and that 134 Democratic votes were cast, making a total of 323 votes. But this gives to Mr. Lee a majority of 55

votes instead of a majority of 37 for Richardson ; and so Mr. Richardson's assumed majority must be decreased by 92 votes. (See also Record, p. 26.)

Rafting Creek Precinct.

Here, as usual, all the managers appointed by the county commissioners were Democrats. One of them, however, Mr. McLeod, did not serve by reason of a broken arm. (See Record, p. 34.) Prince A. James, a colored man, was chosen by the other two managers, both Democrats, to fill his place. (See Record, p. 15.) A fair election appears to have been held, by all the testimony given in evidence. The result was that for Lee were cast 313 votes, and for Richardson, 51 votes. This gave to Mr. Lee a majority of 262 votes. (See Record, pp. 33 and 249.)

The returns and ballot-box were placed by the managers in the hands of Prince A. James to be delivered to the county commissioners. But on the pretext that James had not been appointed by them as one of the managers, these sternly righteous commissioners refused to count the vote at all, and threw out the entire poll ! (See testimony of D. J. Winn, pp. 7 and 8, and E. P. Ricker, pp. 47 and 48.)

Your committee believe that an immense majority of all honest Americans would say at once, since no one questioned the integrity of the election at Rafting Creek poll, Mr. Lee's majority ought to be counted for him. Your committee feel that they are compelled so to count the vote; and Mr. Lee's majority of the honest votes, honestly cast, honestly counted, honestly returned, but *rejected* by the county commissioners, was 262 votes.

Carter's Crossing Precinct.

At this precinct, as in all the precincts of the county, the managers appointed by the county commissioners were all Democrats. (See Record, pp. 8 and 47.)

At this poll Mr. Lee received 407 votes, Mr. Richardson received 29 votes. This would give a clear majority to Mr. Lee of 378 votes. (See Record, pp. 23, 249.)

Dr. Henry Stucky, one of the Democratic managers, swears (p. 18.) that the election was fairly held ; that the two supervisors, one a Republican and the other a Democrat, were present all the time ; that the managers adjourned once for breakfast and once for dinner, about twenty minutes (Record, pages 24, 18), and left the box in the custody of these two supervisors, one a Republican and the other a Democrat,

J. Nelson Carter, one of the two United States supervisors, swears (Record, p. 23) that while the managers were absent no one touched the ballot-box. The poll-list kept by the Democratic managers and the two United States supervisors exactly agreed. (See Record, pp. 23 and 249.) But because of the adjournment by the Democratic managers for breakfast and dinner, E. P. Ricker, one of the county commissioners, swears, on page 48 of the Record, that "*Carter's Crossing* precinct was rejected on the ground that the managers adjourned for breakfast and dinner"! Since no witness controverts the facts as stated here, your committee is compelled to correct and count this poll and give to Mr. Lee 407 votes and to Mr. Richardson 29 votes, thus counting for Mr. Lee a majority of 378 votes at Carter's Crossing poll.

We summarize, so far as Sumter County is concerned : The State

board of canvassers (Record, p. 228) certify and give to J. S. Richardson 2,560 votes and to Samuel Lee 1,789 votes. This would give to Mr. Richardson a majority of 771 votes, and this majority goes to make up Mr. Richardson's majority in the district of 8,468 votes.

But since your committee have analyzed the vote of this county of Sumter, so far as all the disputed precincts are concerned, they find and summarize as follows:

Vote of Sumter County.

| Precincts. | As returned to the State canvassers. | | As corrected and found by the committee to be the actual vote as cast. | |
|--|--------------------------------------|-------|--|--------------|
| | Richardson. | Lee. | Richardson. | Lee. |
| Bishopville..... | 353 | 9 | 353 | 9 |
| Lynchburg..... | 319 | 181 | 258 | 242 |
| Providence..... | 127 | 40 | 127 | 40 |
| Shiloh..... | 180 | 143 | 134 | 180 |
| Swimming Pens..... | 99 | 233 | 99 | 233 |
| Wedgefield..... | 190 | 232 | 190 | 232 |
| Maysville..... | 274 | 257 | 137 | 404 |
| Spring Hill..... | 224 | 181 | 224 | 181 |
| Corbett Store..... | 79 | 346 | 79 | 346 |
| Manchester..... | 28 | 69 | 28 | 69 |
| Privateer..... | 137 | 7 | 127 | 17 |
| Concord..... | 152 | ..... | 152 | ..... |
| Sumter No. 2..... | 398 | 91 | 398 | 91 |
| | 2,560 | 1,789 | 2,306 | 2,054 |
| Add three polls not included in the returns made to State canvassers: | | | | |
| Sumter No. 1..... | ..... | 9 | 1,499 | ..... |
| Rafting Creek..... | ..... | 51 | 313 | ..... |
| Carter's Crossing..... | ..... | 29 | 407 | ..... |
|  | ..... | 2,395 | 4,272 | ..... |
| Lee's majority..... | ..... | ..... | ..... | 1,877 |

This gives a majority in Sumter County to Lee of 1,877 votes, in place of 771 majority for Richardson, as accorded him by the State board of canvassers, and shows conclusively the extent of the frauds perpetrated.

WILLIAMSBURG COUNTY.

The secretary of state counts, in his report, the county of Williamsburg as follows:

For Mr. Lee 1,585 votes and for Mr. Richardson 2,084 votes. This would give to Mr. Richardson a majority of 499 votes. But on page 228 of the Record he certifies that "no managers' returns from any precinct in Williamsburg County are on file in his office; that "none were sent by the county canvassers of said county."

But the positive statute law of South Carolina is that—

After the final adjournment of the board of county canvassers, and within the time prescribed by this act, the chairman of said board shall forward, addressed to the governor and secretary of state, by a messenger, the returns, poll-lists, and all papers appertaining to the election. (See Stat. of South Carolina, sec. 4, act of 1872, vol. 15, p. 171.)

It appears that three of the precincts of this county, to wit, Gourdin's, Midway, and Salter's, were thrown out, and not counted by the board of county commissioners. But it appears by the testimony of Capers

ng, who was the Democratic clerk of the Democratic board of county commissioners (Record, p. 498), that the vote for member of Congress, returned by the managers of election for the precincts of Gourdin's, Midway, and Salter's, and who were all Democrats, was as follows:

| | Lee. | Richardson. |
|------------------------|------|-------------|
| Gourdin's | 217 | 30 |
| Midway | 155 | 72 |
| Salter's | 426 | 49 |
| | | |
| Total | 798 | 151 |
| Majority for Lee | | 647 |

But the same witness swears, on Record, p. 499, that—

The board of election commissioners adjudged the votes cast at Gourdin's, Midway, and Salter's to be illegal, and in the exercise of judicial powers as election commissioners did not count the same.

Since the supreme court of South Carolina, politically opposed to Mr. Lee, have solemnly decided (*Ex parte Mackey et al. vs. Carwile et al.*) that the said county commissioners have no judicial powers in counting the vote for a Representative in Congress, your committee is constrained to say that the House of Representatives is not bound by their attempt to exercise judicial functions.

The objections urged against the validity of these three polls, as the record shows, were not because of frauds perpetrated, but of informality on the part of the managers holding the election, all of whom were politically opposed to Mr. Lee. (See Record, pp. 498 and 499.) Your committee here remark, with regard to the managers who held the election, that the presumption always is that a public officer has legally discharged his duty until the contrary appears. They hold, as did the court in *Biddle and Richard vs. Wing* (Cl. and H., 504), that—

Nothing short of the impossibility of ascertaining for whom the majority of votes are given ought to vacate an election, especially if by such decision the people must, account of their distant and dispersed situation, necessarily go unrepresented for a long period of time. (See McCrary, sec. 304.)

Your committee believe and have acted upon the principle that—

Questions affecting the purity of elections are in this country of vital importance. On them hangs the experiment of self-government. The problem is to secure first the voter a free, untrammeled vote, and secondly a correct record and return of the vote. But these rules are only means; the end is the freedom and purity of the election. To hold these rules all mandatory and essential to a valid election is to subordinate substance to form—the end to the means. (McCrary, sec. 200.)

The chief objection to Gourdin's poll seems to be based on the testimony of N. W. Badget (Record, page 717), who swears that he lived about 50 yards from where the votes were cast. That he went to vote half past 5 o'clock p. m. and found the poll closed, and was thereby prevented from voting. He gives the names of four others who were there at the same time, and were likewise prevented from voting. He also swears that two of these persons lived within 75 yards of the polls, and the others 200 yards away. But A. M. Gordon, one of the managers, who swears he was a Democrat, also swears that the polls were closed at Gourdin's precinct at 6 o'clock p. m. by his watch. Six o'clock is the legal hour for closing the polls. Since Mr. Lee received 217 votes and Mr. Richardson only 30 votes at this poll, and in view of the fact that all these five voters lived so near the poll, and the question what time the poll was closed seems to be fixed by the watch of the Democratic manager, your committee cannot agree that Mr. Lee's majority of 187 votes should be thrown away by the rejection of this poll.

They therefore count the votes at Gourdin's as 217 for Mr. Lee and 30 for Mr. Richardson, as reported by the managers who held the election, and who were politically opposed to Mr. Lee.

Midcay.

The vote of this precinct was also rejected by the county commissioners. Levy Mouzon, one of the United States supervisors, page 492, swears that the managers were all Democrats; that he kept a poll-list, as did the managers, and both lists agreed. As an exhibit to his deposition he furnishes (Record, p. 508) the report signed by himself and J. M. Kennedy, the Democratic supervisor, by which it appears that Mr. Lee received 155 and Mr. Richardson 72 votes. The only objection to this poll is that the managers, all politically opposed to Mr. Lee, closed the polls at too early an hour.

J. J. Morris, one of these managers, swears that this was done on the suggestion of Mr. Mouzon (Record, p. 717), while Mr. Mouzon swears (Record, p. 493) that it was done "at the suggestion of some of the managers." Your committee thinks that even if Mouzon gave bad advice the managers were not bound to take it, and since the contestee does not even pretend that any one was deprived of voting at this poll by reason of its too early closing, your committee cannot agree on such a technicality that the poll should be thrown out and Mr. Lee deprived of his majority of 83 votes. It is true that one witness, R. K. Hurst, swears (Record, p. 717) that Henry Williams, a colored man, told him he intended to vote the Democratic ticket, but after Hurst voted and left he voted the other way. As Williams was not called, and the testimony is purely hearsay, your committee cannot agree that this poll should be thrown out.

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Salter's Precinct.

At Salter's precinct the managers, all Democrats, returned for Samuel Lee 426 votes and for J. S. Richardson 49 votes. This gave Mr. Lee a majority of 377 votes. (See Record, page 498.)

J. E. Singletary, United States supervisor, swears that he was present and saw the polls were opened from 6 o'clock a. m. to 6 o'clock p. m.; that there was no disturbance during the voting; that he kept a poll-list, and that it agreed with a poll-list kept by the managers. (Record, p. 476.)

Julius B. Grayson, one of the Democratic managers, swears that he and one B. O. Bristow were the only managers who held the election; that both served till a quarter of an hour before closing the polls, when Bristow became sick and had to lie down (Record, p. 708). On cross-examination he swears that the election was tolerably quiet during the day till about 6 o'clock; that he closed the poll and refused to count the votes—

Because I was left alone. "I then insisted upon carrying it to my rooms, to remain until Bristow was able to attend to his duties, and the negroes objected to my taking away the box or leaving it till they were counted.

It seems those negroes stuck by Mr. Grayson.

Till I got Bristow out of bed; we then took the box into a little house and counted the votes; we then made our report, and on the following day I brought the box over to Kingstree. (Record, p. 708.)

On cross-examination he swears that the box was always in his sight

until he went into a room to get Bristow to come out and assist him in counting the votes; during that time he left the box in the custody of the United States supervisors Singletary, and one Walter, McCullough. They would not allow him to take the box into the house, unless they could go in too, and so he left the box with them, but the box was locked and sealed "with a strip of paper and sealing wax," and he, Grayson, had the key, and when he and Bristow came out it was in the same condition as when he left it. (Record, p. 700.) Since there is no pretense that the election was not fair, since the box was not tampered with, and the result of the count was declared by the Democratic managers, who held the election, your committee is constrained to count this precinct just as the managers did, that is, 426 for Lee and 49 for Richardson, giving Lee a majority of 377 votes.

Black Mingo.

At this precinct there were returned for Lee 110 votes and for Richardson 81 votes making 191 votes; and giving Lee a majority of 39 votes. (See Record, p. 498.) And this is corroborated by the testimony of Isaac I. White, who swears that 191 votes were cast, and 110 counted for Mr. Lee, but that this was after 12 votes in excess of the poll-list had been drawn out. These 12 votes were fraudulent votes. He further swears that he was a United States supervisor; that he kept a little book to record the names; that the Republicans voted 6 voters at a time; that they came with open votes for him to see, and folded them up and voted them; that he when present when the votes were counted.

Q. Were any tickets found in the box compactly folded together?—A. There were.
Q. What kind?—A. All Democratic tickets.

He also swears that there was an excess of 12 votes.

Q. Whose name was on the tickets for member of Congress so drawn out?—A. Ten for Samuel Lee and two for Richardson.

He further swears that the managers were Democrats; that 14 Democratic ballots were found with one or more Democratic ballots folded within them; that no Republican ballots were found, and after destroying these 14 ballots there were still 12 ballots in excess of the poll-list. On page 500 of Record he gives a list of 120 names who voted for Lee.

Since his testimony is not traversed, the inevitable result is that Lee's vote should be increased 10, giving him 120, and Richardson decreased 10, giving him but 71, as the true result of the honest vote cast at this poll.

Cedar Swamp Precinct.

By the returns of the managers of this precinct Mr. Lee received 8 votes and Mr. Richardson 107 votes.

The managers were all Democrats. The regular place of holding the election was Grayson's store. The election was held at a church three-fourths of a mile distant. J. T. Wilson, a United States supervisor, was at Grayson's as early as 2 o'clock in the morning. Before the polls were opened he found out that the place of holding the election had been removed to the church, but he swears he arrived there 17 minutes by the watch before 6 o'clock a. m. The polls were already opened. He remained there till after the close of the polls; saw the box opened and the ballots counted.

Q. When the box was opened were there any ballots found with one or more ballots folded therein?—A. Yes, sir.

Q. How many and what kind?—A. Six or seven bunches, Democratic ballots, all aggregating 40.

He further swears (Record, p. 486) that these 40 ballots were destroyed by the managers, but that 143 votes still remained in the box in excess of those who voted and whose names were on the poll-list (Record, p. 486), which showed that only 115 votes were cast at that poll. Under the law of South Carolina 143 ballots had to be withdrawn to bring down the number left in the box to correspond with the number of votes actually cast.

The majority at this poll was honestly Democratic. The managers were all Democrats!

The fraudulent votes found in the box were Democratic. It was a Democratic fraud. And in the withdrawal 121 Democratic votes were withdrawn and 22 Republican. Wilson swears that on the 22 Republican ballots withdrawn was Lee's name as a candidate for Congress. Those 22 votes should be counted for him, because they were honestly cast for him.

Having been withdrawn, 22 fraudulent votes were left in the box in their place and counted for Richardson, and his vote should be diminished by the same number, since no witness contradicts the testimony of Wilson. Adding 22 votes to the 8 counted for Lee will give him 30 votes, and subtracting the 22 fraudulent votes which were *not* cast for Richardson from the 107 counted for him will give him 85 votes.

Greelyville Precinct.

At this precinct the managers returned for Mr. Lee 118 votes and for Mr. Richardson 117, giving Lee a majority of 1.

All the managers were Democrats. (Record, page 495.)

F. J. Felix, United States supervisor, was there at the opening of the polls and staid till the ballots were counted. He swears that Samuel Lee received 141 votes and J. S. Richardson 95. (See Record, pp. 495 and 503.) He also swears that there was an excess of 30 more ballots in the box than there were names on the poll-list. In this he is corroborated by W. J. Ferrell, Mr. Richardson's witness, who swears to the same fact, and who also swears that the election was peaceable. (Record, p. 704.) Both witnesses agree that 30 ballots were withdrawn from the box by the Democratic managers.

Felix swears, and is not contradicted, that 25 of the ballots withdrawn were Republican, and had Lee's name on them for member of Congress, and 5 were Richardson's tickets. He also states (Record, p. 496) that one Jim Lescone was detected in the act of voting two Democratic tickets.

It is evident that the fraud perpetrated at this poll was a Democratic fraud; that 25 honest votes cast for Lee were withdrawn, and 5 votes cast for Richardson to equal the 30 fraudulent votes stuffed into the box, which were all Richardson's tickets. Thus Mr. Lee's vote was decreased 25 and Richardson's vote was increased 25 by this fraudulent stuffing of the ballot-box. Your committee purged this box by deducting 25 votes from Richardson and adding 25 votes to Lee, and this would give at Greelyville poll a majority of 51 for Lee.

Kingstree Precinct.

The whole number of votes counted at this poll by the managers of

election for member of Congress was 897, of which they certify that Samuel Lee received 592 and John S. Richardson 305. (Record, p. 504.)

This gave Lee a majority of 287. But, as usual, there was an excess of 110 ballots found in the box. One Republican ballot was found with one or more Republican ballots within the same, while 7 Democratic ballots were found with one or more Democratic ballots within the same.

The number of ballots drawn out of the ballot-box and destroyed by the managers by reason of excess over the poll-list was 110; 74 of these bore the names of the Republican candidates and 36 bore the names of the Democratic candidates. It is evident a gross fraud was committed. It is equally evident that Mr. Lee was cheated, but your committee is unable to say to what extent, and therefore do not undertake to purge this poll.

Muddy Creek Precinct.

At this poll, by the returns, Mr. Richardson received 177 votes, and Mr. Lee none. S. G. Graham, a United States supervisor, swears (Record, p. 490) that the election had theretofore been held at Ard's store; that this was the old voting place. The managers opened the poll at a school-house some 200 yards distant. In this he is corroborated by W. H. Harmon, a witness for Mr. Richardson, and a Democrat. (Record, p. 720.) Graham swears (Record, p. 488) that he showed his commission to the managers and asked permission to act as United States supervisor to the election; that—

Henry Harmon, one of the managers, drew his revolver on me and said my authority was no account; he put his hand in his pocket, drew out his revolver, and presented it to me in a threatening manner.

He also states that Mr. Huggins, the other manager, when Harmon drew his pistol on him, went off, and Harmon said nothing, but shook his head.

Huggins and Harmon both swear that Graham's statement is false, and Huggins swears that the Republicans did not vote at all; they went off. He also swears there were about 35 or 40 negroes in the crowd.

Your committee leave these meager facts without further comment.

Prospect precinct.

At this precinct the managers' returns gave Samuel Lee 120 votes and John Richardson 111 votes; Lee's majority, 9 votes.

All the managers were Democrats. (Record, p. 468.)

As usual, there was an excess of ballots in the box over the names on the poll-list here to the number of 31. (John Roumond, (Record, p. 466.) He also swears that the Republican tickets were on much thicker paper and could be easily told; (Record, p. 468); that on drawing out the excess 29 Republican and 2 Democratic ballots were withdrawn and destroyed. (Record, p. 466.) In this he is corroborated by A. A. Brown, one of the Democratic managers, who swears that he withdrew the excess from the box. Asked if he could tell a Republican from a Democratic ticket in so withdrawing them, he answered, "I could not say positively."

Q. Was there not enough difference so that if you had been disposed you could have distinguished between them?—A. There was.

Asked whether the excess was drawn out fairly, or were Republican ballots fraudulently fished out, he answered, "They were fairly drawn out according to law." He also swore, "I claim to be a true Democrat." (See Record, p. 721.) Your committee thinks that little comment is necessary upon this testimony.

It is evident a fraud was perpetrated by the stuffing of the ballot-box; it is equally evident that it was a fraud by which 29 votes honestly cast for Mr. Lee were withdrawn and destroyed; that Mr. Lee's vote should be increased by 29 votes, which were honestly cast for him but were not counted by the managers; that Mr. Richardson's vote should be decreased by the same number of votes which the managers counted for him but which were not cast for him by the legal voters.

Making this correction, and it is evident that Mr. Lee received from the voters' hands 149 votes, and Mr. Richardson, in like manner, 82 votes. Lee's majority was thus 67 in place of 9 votes, as was reported by the managers.

In view of the above your committee correct the vote of Williamsburg County, as follows:

By the returns of the State board of canvassers Richardson received 2,084 votes and Lee 1,585 votes. This would give Richardson a majority of 499, which it is evident goes to make up Richardson's assumed majority of 8,468.

Your committee here summarize their correction of the vote of this county by precincts, as follows:

Vote of Williamsburg County.

| Precincts. | As returned to the State canvassers. | | As corrected by the committee. | |
|---|---|-------|-----------------------------------|-------|
| | Richardson. | Lee. | Richardson. | Lee. |
| Anderson..... | 112 | 59 | 112 | 59 |
| Black Mingo..... | 81 | 110 | 71 | 120 |
| Cedar Swamp..... | 107 | 8 | 85 | 30 |
| Groham Cross-Roads | 563 | 78 | 563 | 78 |
| Greelyville | 117 | 118 | 95 | 141 |
| Indiantown..... | 18 | 348 | 18 | 348 |
| Kingtree..... | 309 | 592 | 305 | 592 |
| Muddy Creek..... | 117 | ..... | 117 | ..... |
| Pipkins..... | 74 | 109 | 74 | 109 |
| Prospect..... | 111 | 120 | 82 | 149 |
| School-house..... | 83 | 14 | 83 | 14 |
| Scranton..... | 333 | ..... | 333 | ..... |
| Sutton..... | 75 | 138 | 75 | 138 |
| | | | 2,013 | 1,778 |
| Add three polls not included in the return made to the State canvassers: | | | | |
| Midway..... | | | 72 | 155 |
| Salter's..... | | | 49 | 426 |
| Gourdin's..... | | | 30 | 217 |
| | | | 2,164 | 2,576 |
| Lee's majority | | | | 413 |

The above table shows the vote of this county as shown by the testimony, and in place of a majority for Richardson of 499, as given him by the State board of canvassers, your committee find a majority of 412 votes for Lee, and we so accord it.

HORRY COUNTY.

The State board of canvassers certify that Mr. Richardson received

In this county 2,173 votes and Mr. Lee 599, giving Mr. Richardson a majority of 1,574. (See Record, p. 228.) But it appears from the Record, page 236, that the board of county canvassers did not canvass or count the vote cast at Martin Hill precinct, in that county; their reason for so doing they state as follows:

In view of the facts as set forth in affidavits hereto annexed, to the effect that the polls were *not opened* at above precinct at the hour prescribed by law, the board of canvassers, on motion, decided that the vote of this precinct be not canvassed or included in the general statement.

The *ex parte* affidavits referred to are found in the Record on page 237.

Moses F. Sarvis swears that owing to the fact that Nimrod Davis, one of the managers, did not arrive till about that hour, the polls were not opened until about a quarter past eight o'clock in the morning.

John Martin swore he was there at 7 o'clock and could not deposit his vote because the polls had not been opened.

Frank Wilson swore that he was there at 7 o'clock and could not deposit his vote because the polls had not been opened up to that hour, "and that he and others had to go to Cedar Grove to vote."

Upon this *ex parte* testimony the poll was rejected. The three managers who held the election certified (Record, p. 236) that Mr. Lee received 172 votes and Richardson 13 votes, giving Lee a majority of 159 votes, which he lost in the count by the rejection of this poll.

McCravy declares (sec. 114):

That a few minutes' delay in opening the polls will make no difference, but several hours' delay may render the election void, and certainly will have that effect if the party complaining of it can show that he has been injured thereby.

But when we analyze the case it appears that only 185 votes were cast at that poll; that the polls were open continuously from 8½ a. m. till 6 p. m., and that some and probably all of the few persons there about 7 o'clock in the morning went to Cedar Grove and voted. It does not appear for whom they voted or wished to vote. This is one of the few polls at which there is no pretense of intended fraud. There is not the slightest proof that either Lee or Richardson lost a single vote by the failure to open the polls promptly at 6 o'clock in the morning. Your committee feel that the simplest statement of the *facts* affords the strongest commentary. And we count this poll as the managers did, and accord to Lee 159 majority, and as the result of the foregoing your committee add to Mr. Richardson's certified vote in this county 13 votes and to Mr. Lee's 172 votes, making the vote as actually cast by the voters and counted by the managers for Mr. Richardson 2,186 votes and Mr. Lee 771 votes, giving Richardson a majority of 1,415 votes, instead of 1,574, as allowed him by the State board of canvassers.

DARLINGTON COUNTY.

The State board of canvassers certify that Mr. Richardson received in this county 4,671 votes and Mr. Lee 2,117 votes, giving Richardson a majority of 2,554 votes. (See Record, p. 228.)

But the secretary of state certifies on page 228 of the Record that "no managers' returns from any precinct" in Darlington County were on file in his office, nor were any returns from any voting precinct in said county sent to his office by the county canvassers. It is impossible, therefore, to ascertain what was the vote at any precinct in this county by anything in the record from the State board of canvassers. Only the gross result is given as above.

But on pages 570, 571 of the Record the contestee, Richardson, for

the purpose of supplying this deficiency, introduced in evidence a schedule showing the precinct managers' returns for each and every polling place in Darlington County, by which it appears that according to the managers' returns Richardson received 4,567 votes in place of 4,671 votes, as certified to by the secretary of state; in other words, the secretary of state gives Richardson 104 votes more than did the managers who held the election.

But section 4 of the act of 1872 of South Carolina made it the duty of the chairman of the board of county canvassers to forward by a messenger to the governor and secretary of state "the returns, poll-lists, and all the papers appertaining to the election." We think it cannot be questioned that the statement of the managers who held the election, verified by their returns and poll-lists, &c., is better evidence than the certificate of the secretary of state, who certified that he never saw the returns and poll-lists, for they were never sent to him as the law requires.

It is manifest that Mr. Richardson's majority *grew* to the number 104 votes, by his own testimony, after the polls were closed and the result declared.

Florence Precinct.

Contestant in his notice of contest distinctly charged that the poll-list at Florence was "falsified by the insertion thereon of fictitious names." This is as distinctly denied by contestee. L. W. Gadsden, a United States supervisor, swears there were 18 more names on the poll-list kept by the managers than there were ballots in the box. (Record, p. 371.) In this he is corroborated by W. J. Bradford, who was present and kept tally. (Record, p. 176.) He swears there were 1,048 names on the poll-list kept by the managers, and only 1,030 ballots in the box. Both these witnesses were sworn and examined on February 25, 1881.

On the 15th of March of the same year, William McKenzie (Record, p. 507), a witness for contestee, swore he was one of the managers at this poll, and that all the managers were Democrats. He was examined at length, but he does not deny that the poll-list was falsified as above set forth.

Capt. E. W. Lloyd (Record, p. 518), also a witness for contestee, was examined on the 16th of March, 1881. He swore he was clerk of the board of managers; he was also a Democrat. He ought to know all about the poll-list. He does not deny or even mention the alleged falsification of the poll-list by the insertion thereon of 18 fictitious names. No witness in all the record denies the statements of Gadsden and Bradford in regard to the poll-list at Florence, though some 16 were put upon the stand and examined by contestee touching that poll.

L. W. Gadsden, United States supervisor (Record, p. 365), swears that he arrived at the poll a few minutes after 5 o'clock a. m.

The managers were then there; the door was guarded where the poll was; the place was crowded with a lot of Democrats; I could not get within ten feet of the door.

He states that a few minutes before the poll was opened he attempted to go in to witness the opening and to examine the box; that he was obstructed from getting in by a crowd of town authorities or policemen; that he showed his commission as United States supervisor, and told them he was going in; that one Captain Gaillard told him he must wait until he, Captain Gaillard, saw Captain Blackwell, to find

out if he had any right there or not. Gaillard came back and said it was all right. He started, and was stopped again. Captain Gaillard then assisted him, and he then got in.

The box was locked, and the voting had been going on ten or fifteen minutes. "I asked the managers to let me copy the names off their poll-list; they said they had not time to stop, and could not stop the clerk."

He further testifies:

* I asked to be allowed to have a clerk, and was refused, and was not allowed to copy those names on the managers' poll-list that had voted. (See Record, p. 365.)

He also testifies, on Record, page 369, on his cross-examination:

Q. Did you stay there all day?—A. Yes, sir; only absent for about three minutes.

Q. How do you account for the fact that you were there all day as a life-long Republican, watching the election, for there being more names on that poll-list than there were ballots in the box?—A. *They must have had a false poll-list prepared beforehand that they carried in there, and failed to put enough ballots in the box to tally with the poll-list.* I was not allowed to examine the list. The box was closed before I was allowed to go in.

Q. Did you witness the count?—A. I did.

Q. You stated that you were there all day except about three minutes. Now did you or not see the names that were written on the poll-list?—A. I did not, for I was not allowed to examine it.

Q. Did you ask to be allowed to examine that poll-list?—A. I did ask, and asked further to be allowed to copy from it.

Q. Who did you ask?—A. The managers.

Q. What time of day was it when you asked to be allowed to copy and examine the poll-list?—A. I first asked in the morning when the voting commenced, and again that night when the polls closed.

Q. What did the managers say in reply to your request?—A. They said I could not be allowed to interrupt the clerk. That was in the morning. But at night when I asked to be allowed to examine the list, they refused to let me examine it, but had no objections to the clerk calling the names so I could take them down, but said it was too late to remain.

Q. Who was the clerk?—A. Captain E. W. Loyd.

On his cross-examination he further states (Record, p. 368):

Q. What time did you reach the polls on the morning of the election?—A. A few minutes after five o'clock.

Q. What did you see there?—A. I saw a lot of Democrats around the polls and the door guarded by policemen and constables.

Q. Did you try to gain admission to the polls?—A. I did.

Q. To whom did you apply for admission?—A. I started to the polls and was stopped by policemen and constables and told that I could not go up.

Q. What policemen and constables denied you admission?—A. T. D. Brunson, John Dockery, E. M. Selfe; those were the policemen, and Z. T. Kershaw was the constable.

Q. What did they tell you?—A. That I could not go up to the polls. I told them I was United States supervisor, and showed them my commission, and told them I must go up.

Q. Is that all they said to you?—A. Yes; that I could not go up, and shoved me out of the way.

Q. Did they or not tell you that nobody but policemen and constables could go into that house?—A. They had a line drawn, and told me that nobody else had any right in there.

Q. Did they or not tell you that nobody but policemen and constables could go into that house?

(Counsel for contestee demands an answer, yes or no.)

A. I have answered it already.

Q. Did you show your commission to anybody?—A. I did.

Q. To whom did you show it?—A. I showed it to the very men that stopped me, and Captain Gaillard.

Q. Did they then admit you?—A. Captain Gaillard told me to wait until he saw Captain Blackwell.

Q. Did he say anything else besides this?—A. Not until after he saw Captain Blackwell.

Q. Did he or not tell you to wait until he saw Captain Blackwell as to whether or not you had a right to go in?—A. He did; but Captain Blackwell is a private citizen, and I did not think he had a right to pass upon my commission.

He also swears (Record, p. 366) that 300 or 400 Republicans were standing in line, ready to vote, when the polls closed, while the Democrats were allowed to vote freely and unobstructedly during the day; that late in the evening 60 or 75 Democrats came in from Timmonsville; that the line of Republicans that had been standing there all day were made to stand back, by the constables and town marshals, and those men from Timmonsville allowed to go up and vote. He is corroborated by 208 voters who were prevented from voting, whose depositions are found between pages 139 and 342 of Record. They all swear they desired to vote for Samuel Lee, but were forcibly prevented from getting to the ballot-box. Asked why they did not, the answers were, "because the Democrats would not let me get to the polls." Witness after witness swears that he was there from 6 o'clock a. m. to 6 o'clock p. m. trying to vote. What was done was excused by Mr. Richardson (brief, p. 148) on the ground that the Republicans intended to take possession of the polls and vote first, and asks—

Can the Democrats be blamed for standing their ground and voting first and before they gave way to the colored voters, who had laid a trap in which they were caught?

Surely not, but neither party had the right to prevent the other party from voting.

John T. Rafra was United States supervisor at Timmonsville, and swears (Record, p. 85) he saw a crowd of Democrats, he counted 75 on the top of the flat cars, "and the coach was full of them," going in the direction of Florence. He swears they all voted before leaving Timmonsville. In this he is corroborated by John E. Keeler (Record, p. 374), who testifies he counted 75, and that every one of them had voted before they left Timmonsville. S. W. Gadsden gives the names (Record, p. 365) of persons he knew who came from Timmonsville and voted at Florence, viz, Alexander Taylor, Yauty Byrd, H. M. Oliver, W. J. Stradford, and George Montgomery. Not one of these persons was called in rebuttal! The few witnesses examined by Mr. Richardson touching Florence poll were the officers who held the election, the policeman who kept the colored Republicans from the polls, and a few active Democratic partisans.

We have seen (Record, p. 571) that the contestee puts in evidence a schedule of the vote at each precinct in Darlington County, accompanied by the certificate of J. N. Garner, the clerk of the court of common pleas, that—

The schedule represents truly and correctly the balloting for member of the Forty-seventh Congress.

Sworn as a witness, the same Garner testifies as follows (Record, p. 738, bottom):

Q. Have you not had occasion to certify to the correctness of the precinct returns touching the last election for member of Congress?—A. I don't think I did, because I could not certify to the correctness of the returns, as it seems to me that a commissioner ought to do that.

Q. Did you or not?—A. I did not.

It appears further, by his testimony, that the precinct returns, instead of being sent, as the law requires, to the secretary of state, were with the ballot-boxes placed in the jury-room opening into the court-room, which was open for all public purposes, and only when not used was it locked up. Two terms of court were passed before he was examined.

Your committee feel constrained to say we must reject Florence poll, because there was an unlawful interference with the United States su-

pervisor of election, whereby he was prevented from discharging the duties which were committed to his hands by the law of Congress; because it is clear that the poll-list at Florence was falsified by the insertion thereon of fictitious names by the officers of the election; because it is evident that a crowd, the exact number of which it is impossible to say, who had already voted at Timmonsville, were permitted to vote at Florence for Richardson, while more than 200 of Mr. Lee's supporters, standing in line all day, were forcibly prevented from voting at all; and because the evidence as to what the actual vote at Florence poll was is so unreliable as to be utterly without credit.

The conduct of the election officers was such as to destroy the integrity of their returns, even if we had any means of knowing what those returns were. There is no proof *aliunde* how the vote stood. The election was so utterly unfair, by reason of fraudulent voting and forcible preventing of honest voting as to give us no course but to reject the poll, which we accordingly do.

Darlington Precinct.

What the exact vote at this precinct was we have no means of determining other than the certificate of J. N. Garner, the clerk of the court of common pleas for that county, which was introduced by Mr. Richardson, on page 571 of the Record. But we have already seen in the case of Florence precinct that the same witness, Garner, testifies that he never did certify to the correctness of the schedule found on page 571 of the Record, in which Richardson is set down as having received 1,271 votes and Lee 117 at Darlington precinct. On pages 737 and 738 of the Record, the same witness, Garner, testifies as follows, on the 15th of April, 1881, when interrogated as to the returns of the precinct managers:

A. Election papers were filed in my office by the commissioner of election, J. G. McCall.

Q. Please state what those papers were.—A. I cannot; I did not examine them.

Q. Have you not had occasion to examine those papers since they have been filed in your office?—A. I have not.

Q. Then you have no idea of what papers are filed in your office bearing upon the election of member of Congress in Darlington County at the last election?—A. I know there were election returns bearing upon the last election. They have been examined repeatedly by others, but not by myself.

Q. Do you know if those returns in your office are correct or not?—A. I do not know anything about them.

Q. Were those returns filed in your office delivered to you in or out of the ballot-boxes?—A. They were delivered to me in an envelope outside of the ballot-boxes.

Q. Were the ballot-boxes ever filed or deposited in your office?—A. They were, as they usually have been in my office.

Q. Have you ever had occasion to examine the papers or seen in those boxes?—A. I have never examined the papers and have never seen in the boxes until yesterday.

In this testimony he is corroborated by J. G. McCall, who was chairman of the county board of commissioners. On page 110 of the Record he testifies as follows:

Q. Did you make any returns to the secretary of state showing the votes cast at the separate precincts throughout the county?—A. We did not.

Q. What did your board do with the returns from the various precincts throughout the county?—A. I think those returns were put back in the ballot-boxes and turned over to the clerk of the court.

Q. Will you be positive that such disposition was made of them?—A. That is my recollection of it.

On page 109 of the record, when asked if he could state what was

the vote at Darlington precinct for member of Congress, he answered, page 110, top: "I cannot."

It thus appears by the testimony of McCall, the chairman of the board of county commissioners, who testifies that he made no return of what the vote was at Darlington precinct, either to the secretary of state—which is corroborated by the certificate of the secretary of state, who testifies that no such returns were made to him, page 228—or to the county clerk, and by the testimony of the clerk himself, on page 738, who also swears he never examined the managers' returns from the various precincts of Darlington County showing the results of the election held in 1880 for member of Congress.

It further appears by the testimony of George W. Brown, Mr. Richardson's own attorney, who was put upon the stand by Mr. Lee, in rebuttal, that he found the precinct returns in the ballot-boxes in one of the jury-rooms of the court-house. (Record, p. 736.)

On the cross-examination of Garner, the clerk, by the same witness, Brown, acting as the attorney for Mr. Richardson, testifies as follows (Record, p. 739):

Q. You say that the ballot-boxes, with what they contained, upon being returned to you after the last election, were deposited in a jury-room upstairs in the court-house?—A. They were.

Q. Have you not charge, and do you not keep the keys of that court-house by authority of law?—A. I do.

Q. The court-room proper leading to that jury-room is used for all public purposes, is it not?—A. It is.

Q. When not so used, is it not kept locked?—A. It is.

Q. Has it not been frequently used for public purposes since the last election and since those boxes were deposited in the jury-room?—A. Yes, sir.

Q. When the court-room is used by the public, have they not also access to the jury-room where the boxes were?—A. They have.

Q. Were those boxes kept locked, and is there any law requiring you to keep them locked?—A. They were not kept locked, and there is no law requiring them to be kept locked.

Q. Might they not, when returned, contained the papers for which contestant yesterday searched, and all other papers which the law requires them to contain, and have been lost since?—A. They might.

We think the above evidence conclusively establishes that no confidence can be placed in any so-called returns from Darlington precinct.

Brown testifies that he prepared the statement (Record, p. 736) which purports to have been certified to by the clerk, Garner, but which he testifies he did not certify to. The ballot-boxes and their contents had been open to the access of any who chose to go and examine them, as the witness Brown did. Whether they had been tampered with or not no one testifies and no one can. How the vote stood for member of Congress at Darlington precinct the secretary of state does not know, for he certifies that no separate return of the vote of that precinct ever came to his hands.

Garner, the clerk, as we have seen, swears he does not know.

McCall, as we have seen, also swears that he does not know; and C. S. McCullough, who swears he was chairman of the board of managers, testifies (Record, p. 527):

Q. What was the number of votes cast for member of Congress at this poll?—A. I do not remember.

And Philip Lewenthal, who swears that he was clerk of the board of managers at Darlington poll (pp. 546 and 547) testifies that he does not know. In the entire record no witness swears how the actual vote stood at Darlington poll. This is one of the precincts especially attacked by Mr. Lee.

A vast mass of testimony was taken by both parties touching this poll. From the evidence in the record it is not possible to ascertain the true result.

The rule as laid down by McCrary (sec. 437) we think should be applied to this case, and is as follows :

Where the true vote cannot be ascertained, either from the returns or from evidence *aliunde*, the vote of the precinct is to be rejected.

But it is very evident from the testimony that intense excitement prevailed at Darlington on the day of the election. The polls were held at a different place than the usual one.

The witness McCall, a county commissioner of election (Record, p. 111), admits that the place was less convenient. It was up in the second story of the court-house, 15 feet above the ground, with two stairways leading up to the ballot-box.

It appears from all the testimony that the Democrats, dressed in red shirts and caps, took possession of the polls from the outset.

J. A. Smith (Record, p. 106), states that from 700 to 800 Republicans were prevented from casting their votes by reason of intimidation. He says :

I made three attempts to reach the ballot-box—myself and others; I found it impossible to do so without a collision with the Democrats and red-shirts, who had the steps packed from bottom to top.

Aimwell Western, jr. (Record, p. 92), states that from 800 to 1,000 Republicans left the polls without voting. He also states that on the night before the election two wagons loaded with guns came on the back street and they were carried down the street next to the court-house. A portion was placed in a store of one Early and “some were put in the court-house where the ballot-box was.”

On Record, page 94, he gives the names of the men who unloaded those wagons: Moses Bishop, Sam Hinds, Rosser Hart, and Charlie Bishop. He states that Moses Bishop and Sam Hinds carried a portion of those guns upstairs where the ballot-box was. It appears from his testimony that guns were brought on the train about 12 o'clock at night, which train neither blew a whistle nor rung a bell. The guns were tied up in blankets in large bales.

None of the persons who handled the guns were called as witnesses to deny the statement. A great many witnesses were called by Mr. Richardson who did not see any guns and did not see any intimidation.

Aimwell Weston, sr., swears as follows, among other things :

Q. Did you vote there?—A. I could not vote there.

Q. Why could you not vote?—A. There was bulldozing, pushing, pulling, and blockading the steps. Some of them had knives drawn; looked like they were drunk.

He also testifies they had red shirts on. (Record, p. 116.)

Edward Williams, on same page, testifies to the same effect.

Simeon Saunders (Record, p. 117) saw men attempt to go up those steps and saw them tumble back; they were pushed back by the Democratic crowd upon the steps.

Thomas Myers (Record, p. 105) testified :

Q. What poll did you attend?—A. Darlington poll.

Q. Did you vote?—A. I did not.

Q. Why did you not?—A. They would not let me.

Q. Who would not let you?—A. The Democratic party.

Q. How did they prevent you?—A. I started up the steps, and they told me I should not go up.

Q. What did they do to prevent you from voting?—A. They pulled me back. I attempted to go up twice, and they pulled me back by my coat.

Noah Burch testifies (Record, p. 105) that he tried to vote; that the steps were full from bottom to top with white men; that they shoved him down and told him he could not vote; that he tried again, and was again shoved back by the Democratic crowd on the steps.

Simon Scott (Record, p. 136) testifies that a crowd of Democrats dressed in red shirts prevented him from voting. He says:

I went up to the steps of the court-house, and they said, You cannot vote here unless you vote a Democratic ticket.

Burrell McIver (Record, p. 355) testifies that he did not vote—

Because the court-house steps were so crowded with Democrats that I could not reach the ballot-box to cast my ballot. They would not let me go up the steps.

Q. Did you see any men with guns, and to what political party did they belong?—A. The Democratic; I saw no arms but theirs.

Q. Where were these men with their guns?—A. In a store in front of the court-house.

Peter White (Record, p. 384) testifies as follows:

Q. Did you vote?—A. No, sir,

Q. Why not?—A. Because I was prevented by the Democratic party. The ballot-box was in the court-house, and I tried to go up the steps and they would not let me go up; saw one man trying to climb up on the outside of the steps, and when he got up his handhold was broken loose and he fell to the ground and was hurt.

Cross-examined by C. D. EVANS:

Q. What time did you reach the Darlington poll that day?—A. About a quarter of an hour after sunrise.

Q. When did you leave?—A. About 2 p. m., I guess.

Q. Did you hear Jack Smith's order for all Republicans to go home, and at what time did you hear it?—A. I heard it about 11 a. m.

Q. You say it was impossible for you to vote from the time you reached Darlington until you went away?—A. It was really impossible. I was very determined, and I saw no chance without getting hurt or being killed.

Alonzo Lewis sworn (Record, p. 378):

Question. State your name, age, residence, and occupation.—Answer. Name, Alonzo Lewis; 23 years old; residence, Darlington County; occupation, butler.

Q. Were you at the Darlington polling precinct on the day of the last election?—A. Yes, sir.

Q. Did you vote?—A. No, sir.

Q. Why not?—A. Because I couldn't get to the polls; the red-shirt Democrats prevented me from getting to the polls; they were standing on the steps leading up to the box. I attempted to go up, and they said, "No radicals in here; no radicals in here," and all caught arms together and shoved me back.

Q. Who did you intend voting for for Congress?—A. Samuel Lee.

The above are given as specimens, taken almost at random from the printed testimony.

The depositions of 240 witnesses appear in the Record, who swear they were present at the Darlington poll and desired to vote for Mr. Lee, but were prevented from so doing by threats or intimidation. Convinced they could not vote without danger of riot and bloodshed, hundreds withdrew from the poll. There is counter-testimony in the Record, but it is from the very parties complained of, and from comparatively few other witnesses.

Your committee are compelled to say, from all the evidence, that the case of Darlington poll falls within the principle laid down by McCrary, as follows:

SEC. 416. The true rule is this: The violence or intimidation should be shown to have been sufficient either to change the result or that by reason of it the true result cannot be ascertained with certainty from the returns. To vacate an election on this

ground, if the election were not in fact arrested, it must clearly appear that there was such a display of force as ought to have intimidated men of ordinary firmness.

Here it is proper to remark that up to 1878 Darlington precinct always was largely Republican.

A few years ago the Republicans used to poll 1,200 to 1,300 votes at that poll. See testimony of John G. Gatlin (Record, p. 79), John Lunney (Record, p. 81), Jordan Lang (Record, p. 95).

At the election in 1880 Mr. Richardson is credited by the schedule, which purports to be certified to by the clerk, Garner, but which he testifies he did not certify, as having received 1,271 votes to 117 votes for Mr. Lee; and from the impossibility of ascertaining how the actual vote stood at Darlington poll, by the disregard on the part of the county commissioners to forward the returns and poll-list to the secretary of state, in violation of a plain provision of law, and from the fact that intimidation and violence prevented hundreds from voting, your committee reject Darlington poll from the count.

Lydia Precinct.

All the managers at this poll were Democrats.

As we have seen, no possible reliance can be placed on the statement in the schedule purporting to be certified by the clerk, Garner (Record, p. 571), since he swears he did not certify it. We therefore rely upon the report, sworn to and put in evidence, of the two United States supervisors (Record, p. 113), by which it appears that Richardson received 572 votes and Lee 193 votes.

An excess of 163 votes was found in the box, showing the box was stuffed. As the election seems to have been fairly conducted after the arrival of the supervisor, Robinson, which was just after the polls were opened, we conclude the box was stuffed in the beginning, and by the managers. But since the excess was drawn from the box, and seems to have been fairly withdrawn in proportion to the vote of each candidate for Congress, we think that both Lee and Richardson should each be credited by the number of votes which were counted for them, as shown by the report of the two supervisors, viz., Richardson 572 votes, Lee 193; majority for Richardson of 379.

Society Hill Precinct.

For the same reasons as above stated, no reliance can be placed on the clerk's schedule, which the clerk himself rejects, as to what was the true vote at this precinct. But on page 363 of the Record we have the report of Z. W. Wines and E. P. Cannon, the two supervisors, which Wines, as a witness (Record, p. 338), testifies gives a true account of the poll when the box was opened and the votes counted.

By it it appears that the poll-list kept by the managers and those kept by each of the supervisors all showed that 535 votes were cast. Extra ballots were found in the box.

The box had been stuffed. John T. Prince, one of the managers, swears (Record, p. 565) that 58 ballots in excess were found in the box. The managers and clerks were all Democrats. The excess of ballots was drawn out and destroyed, of which 12 had Richardson's name on them.

If the ballots destroyed had been the exact fraudulent ballots put in the box this would have been precisely just. But this could scarcely be.

It is not right that all the managers, in all the precincts of a county, should be the partisans of one candidate.

It is not just that ballots should be honestly voted and then withdrawn and destroyed because other fraudulent ballots had been stuffed into the box.

Happily, we have the means to determine how many honest votes each candidate for Congress received at this poll. In the Record, page 118, is found a list of 383 names kept by H. D. Kershaw and R. E. Postell, all of whom, they swear, voted for Mr. Lee. They saw them cast their votes. (Record, pp. 118 and 339.) Since 12 of the 58 votes drawn out were for Richardson the other 46 must have been for Lee; and adding these 46 votes to the 337 counted for Lee we have 383 votes, which exactly corresponds with the list of 383 names of voters, who Kershaw and Postell testify voted for Lee. We therefore accord to Lee 383 votes and to Richardson 152 votes, making a total of 535 votes, the number of votes cast at this poll.

Lisbon Precinct.

This poll is in like strait as the preceding. We, however, find on page 238 of Record the report of the two United States supervisors, H. C. Harroll and J. H. Huggins. This report Harroll, as a witness, on page 194, testifies is correct. By it we see that 493 names were on the poll-list, and the managers counted for Richardson 317 votes and for Lee 176 votes.

This box had been stuffed with 98 fraudulent ballots. All the managers were Democrats. Ninety-eight ballots were withdrawn and destroyed, of which 39 were for Lee and 59 for Richardson. (Record, p. 238.)

If this was a Democratic fraud, then Lee was deprived of 39 votes, and Richardson gained that many. That it was a Democratic fraud is manifest when we see that W. R. Dukes (Record, p. 201) testifies he was present and kept a list and saw 215 persons vote for Lee. He furnishes that list of names. (Record, p. 223.) There is no witness called to deny this. And when we add 39 Lee ballots, withdrawn from the box, to the 176 which the managers counted for him it amounts to exactly 215. But subtracting 215 Lee's votes from the whole vote of 493 and it leaves 278 as Richardson's true vote.

Timmonsville Precinct.

By the report of the supervisor (Record, pp. 68 and 69) 608 votes were counted for Representative in Congress. The managers counted 533 votes for Richardson and 75 for Lee. It was from Timmonsville that 75 or more Democrats, having voted there, went to Florence poll and again voted. The ballot-box was stuffed at Timmonsville, and the excess drawn out and destroyed. Rafra, the supervisor, swears to his report. (Record, p. 84.) The managers and clerk were all Democrats. J. E. Keeler testifies (Record, p. 373) that he kept a list of the Republicans; that they voted Republican tickets, and for Samuel Lee for Congress. The list is found (Record, p. 376) showing 199 names.

The contestee has not shown that a single one of these 199 did not vote for Mr. Lee. We correct this precinct by giving to Mr. Lee 199 votes and subtracting that number from the whole vote, 608, gives 409 as Mr. Richardson's true vote.

Leavenworth Precinct.

By the report of F. W. Prince, United States supervisor, made an exhibit to his deposition (Record, p. 98), it appears that the names on the poll-list kept by the managers of election were 594. That 239 fraudulent ballots in excess were found in the box. As usual the box had been stuffed; 239 ballots were withdrawn and destroyed by the Democratic managers—110 Republican and 129 Democratic. W. H. Waddell testified (Record, p. 99) that he kept a list of the Republican votes; that he saw the names of the candidates on the tickets, and that they all voted for Samuel Lee.

The list foots up 308 names. As this list is undisputed by any witness, we accord to Mr. Lee 308 votes at this precinct, and the balance of the 594 we count for Mr. Richardson, to wit, 286 votes.

Correcting the vote at the precincts above set forth, as we have, and leaving untouched the other precincts of Darlington County, and counting them as claimed by Mr. Richardson, and the result is as follows:

Vote of Darlington County.

| Precincts. | As found by the committee. | |
|-----------------------------|----------------------------|-------|
| | Richardson. | Lee. |
| Leavenworth | 286 | 308 |
| Cartersville | 195 | 69 |
| Lydia | 572 | 193 |
| Mechanicsville | 31 | 349 |
| Timmonsville | 409 | 199 |
| Gum Branch | 143 | 29 |
| Evingham | 142 | 95 |
| Lisbon | 278 | 215 |
| Society Hill | 152 | 383 |
| Darlington | 187 | 44 |
| Hartsville | | |
| Florence | | |
| Richardson's majority | 2,395 | 1,884 |
| | 511 | ..... |

We find for Mr. Richardson, in Darlington County, a majority of 511 votes, in place of 2,554 votes, as given to him by the returns of the State board of canvassers.

MARBOROUGH COUNTY.*Bennettsville Precinct.*

The secretary of state certifies (Record, p. 226) that Lee received 464 votes and Richardson 335. An excess of 61 votes was found in the ballot-box. That number of ballots were withdrawn and destroyed, 60 being Lee's votes and only 1 a Richardson ballot. (D. D. McColl, United States supervisor, Record, p. 253.) How this strange result happened McColl in his testimony explains. The tickets were easily distinguished by feeling.

When box was opened at close of polls there were sixty-one more votes in box than names on poll-list of clerk of managers, and in drawing out, the clerk who did the drawing would carefully feel the ballots, and turn loose a Democratic ballot if he found on feeling that it was such, and continue to feel until he would bring out a

Republican ticket. The second ticket drawn from box was only mistake he made, this one being a Democratic ticket; the other sixty so drawn out being Republican.

Weatherby, a Democratic manager, testifies as follows (Record, p. 652);

Q. Could he simply by the touch distinguish the tickets?—A. Yes, I think so; unless they were pasted together; one was heavier than the other.

He also swears the clerk seemed to be in no hurry.

Now, adding 60 votes to the 464 counted for Lee and we have a total of 524 as Lee's true vote, if all the Republicans voted for him; but McColl swears that 511 did vote for him, whose names he gives (Record, p. 274), and Mr. Lee proves by five other witnesses, whose names were not on McColl's list, that they also voted for him. (See Record, pp. 255, 259, 260, 263, and 273.)

We therefore count for Lee 516 votes, and give the balance, 283, for Richardson.

Red Hill.

The secretary of state returns for contestant 182 votes, and for contestee 353 votes, but it appears by the testimony of J. W. Jenkins (Record, p. 270) that the ballot-box was stuffed. Jenkins was United States supervisor. He swears to the report found on page 290 of Record, that there was an excess of ballots in the box over poll-list of 25. All the managers were Democrats. In withdrawing this excess, 24 ballots bore the names of the Republican candidates and 1 of the Democratic candidates.

William A. Rogers, an Independent, swears (Record, p. 269) that the colored voters all approached the polls by the back door—

And as one approached the door and made it known that he wanted to vote the ticket prepared by the Republican party, I would fold the ticket and hand it to him. I did this so they should not be charged with voting double tickets. (Record, p. 269.)

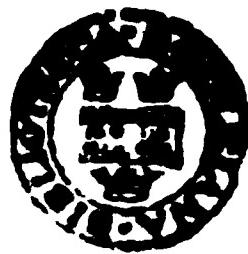
And one of the Democratic managers, W. B. Alford, a witness for contestee (Record, p. 663), thinks there was an excess of about 24. On cross-examination, he testifies as follows:

Q. Can you account for how 24 ballots were in excess of the names on the poll-list?—A. Only in this way, by finding two ballots folded together; from appearance they were supposed to be put in together when voted.

Q. When two or more ballots were found folded together, were not all destroyed save one?—A. I don't recollect about that, but I think they were returned to the box and the excess drawn out.

Q. Then the managers did not observe the law in that particular, did they?—A. I do not remember the particulars in that regard; I paid more attention toward the ballot-box than anything else.

Since all the officers conducting the election were Democrats, since pains were taken to prevent the Republicans being charged with double voting, and since the excess of votes must have been a Democratic fraud, from the evidence, and because it clearly appears that at least 24 honest votes were withdrawn, and that at least 23 if not 24 were Republican tickets, we correct this poll by adding 23 votes to contestant's returned vote of 182, because 23 of his honest ballots were withdrawn from the box, and we deduct 23 votes from the 353 votes counted for Richardson, because 23 fraudulent ballots were counted for him. So correcting the vote and the result is: For Richardson, 330; and for Lee, 205.

Brownsville Precinct.

At this precinct, by the secretary's report, Lee received 90 votes and Richardson 290, but it appears by the report of the two United States supervisors, Moses W. Pearson and W. B. Drake, put in evidence and found on page 242 of Record that this ballot-box was stuffed by 129 ballots over the names on the poll-list; to reduce the number of ballots to correspond with the names on the poll-list 129 ballots were withdrawn by the managers, and the strange disparity occurred here as elsewhere in withdrawing the excess. The managers were all Democrats. They ought to have guarded the box with zealous care. They withdrew 116 ballots which bore the name of the Republican candidate and only 13 Democratic ballots. It was a repetition of what we have already seen occurred again and again. We correct this poll by adding 116 to the 90 votes counted for Samuel Lee, making a total of 206 for Lee; and deducting 116 from the 290 which the managers counted for Richardson, which leaves him 174 votes. Lee honestly received 206 votes and Richardson 174 at this poll.

Hebron Precinct.

At this precinct the secretary returns for Lee 106, for Richardson 245; total 351. There was an excess of ballots in the box of 43 over and above the names on the poll-list. See testimony of B. F. Hamer, United States supervisor (Record, p. 258), his report (Record, p. 282).

All the election officers were Democrats. This box had also been stuffed; 43 ballots were withdrawn and destroyed. How many Lee ballots were withdrawn the Record failed to show, but Ennis Campbell (Record, 263) and Crawford Tournage swear about 30 Lee ballots were withdrawn and destroyed. Tournage further swears that he saw 145 Republican votes cast. Adam Cook (Record, p. 259) testifies that he made a list of 145 names of those who voted the Republican ticket; he furnishes that list in Record, p. 283.

In this he is corroborated by Gibson Townsend (Record, p. 260), who testifies he was acquainted with most of those voters. As none of the witnesses called by contestee deny the above statement, we think it clear that Lee received 145 votes at this poll. We accord him that number, and the balance to Richardson, which gives for Lee 145 and for Richardson 206 votes.

Smithville precinct.

By the secretary's table Lee received 229 votes and Richardson 233 votes.

At this poll, as usual, all the managers were Democrats, and the ballot-box was stuffed.

H. S. Grant, United States supervisor, testifies (Record, p. 256) there were 81 more ballots in the box than there were names on the poll-list. That number was drawn out and burned. Sixty-four of them bore the name of Samuel Lee for Congress. (Record, pp. 256 and 282.)

H. E. Johnson, a white man, and an Independent Democrat, testifies (Record, p. 267) that Lee's name was on all the Republican tickets drawn out.

William Pagues, a Democratic manager, drew out the ballots. Johnson swears (Record, p. 267):

I told him that in the manner in which he was drawing out these ballots I pro-

nounced him a perjured man, and told him I intended to indict him in the United States court.

The reason given was because he evidently hunted for Republican tickets.

It was so evident that I complained of it. (Record, 267.)

On page 266 he testifies to having detected one Williams in the act of voting two Democratic tickets at once.

The vote at this poll is proved and sustained by a list kept and furnished by witness Benjamin Quick (Record, p. 292), whereby it appears the names of 295 voters are given who voted the Republican ticket. As this testimony is not rebutted, we count, therefore, at this precinct for Lee 295 votes and for Richardson 167 votes.

We summarize the vote of this county by precincts as follows:

Vote of Marlborough County.

| Precincts. | As returned by the State canvassers. | | As corrected by the committee. | |
|-----------------------------|--------------------------------------|-------|--------------------------------|-------|
| | Richardson. | Lee. | Richardson. | Lee. |
| Bennettsville | 335 | 464 | 283 | 516 |
| Red Hill | 353 | 182 | 330 | 205 |
| Adamsville | 331 | 80 | 331 | 89 |
| Brownsville | 290 | 90 | 174 | 206 |
| Clio | 214 | 59 | 214 | 59 |
| Red Bluff | 187 | 65 | 187 | 65 |
| Hebron | 245 | 106 | 208 | 145 |
| Smithville | 233 | 229 | 167 | 295 |
| Brightsville | 237 | 181 | 237 | 181 |
| Richardson's majority | 2,425 | 1,456 | 2,129 377 | 1,753 |

The above table shows Richardson's majority in this county to be 377, in place of 969, as allowed him by the State board of canvassers.

MARION COUNTY.

Marion Court-House Precinct.

At this ballot-box, as at every one in the county, all the managers were Democrats. B. A. Thompson (Record, p. 425) testifies that he was one of the county commissioners of election for Marion County; that he demanded of the board the appointment of a Republican manager at each precinct, but this was not complied with, and the majority of the board appointed none but Democrats.

At the Court-House precinct the managers reported 522 votes for Mr. Lee and 574 votes for Mr. Richardson. As seems to be the rule, this ballot-box was stuffed. R. B. Mullins, one of the managers (Record, pp. 632 and 633), testifies: "There was an excess of about 50 ballots in the box over the names on the poll-list."

J. H. Holloway, a Republican, testifies (Record, p. 411) that 56 Republican votes were thrown out at this precinct. R. J. Blackwell, another Democratic manager, testifies (Record, p. 637) that there was an excess over the poll-list of about 50 votes. E. J. Crawford, United States supervisor, whose report is put in evidence on page 247 of Record, states that the excess was 55 votes, and of the 55 ballots withdrawn

and destroyed 54 bore the names of the Republican candidates, and "one doubtful whether Democratic or Republican."

There seems to be no essential controversy, and your committee count 54 votes as having been withdrawn from Mr. Lee's honest vote. They accordingly add 54 votes to the number counted for Mr. Lee, and deduct that number from the 574 votes counted, but not cast, for Mr. Richardson. This would give as the true result at this poll for Lee 576 votes and for Richardson 520 votes.

Berry's Cross-Roads Precinct.

At this precinct the secretary of state reports that Richardson received 372 votes, and Lee received 168.

The managers were all Democrats.

This poll was no exception to the fact of ballot-box stuffing. All the witnesses interrogated admit this. Gregg C. Crawford (Record, p. 427) testifies that the poll-list called for 541 votes; that 637 ballots were found in the box, and he testifies:

Joe Jarnegan put his hand into the box ninety-six times, and took out the excess votes. All he took out were Republican. They put them into the fire-place and burnt them.

B. F. Crawford, United States supervisor, whose report is in evidence (Record, p. 248), states that 96 ballots were withdrawn—93 Republican and 3 Democratic. The Republican tickets were thick like unto a card, and the Democratic ticket was a little thin ticket. (Record, p. 427). Since it is evident, from the testimony, that the ballot-box was stuffed—that 96 fraudulent ballots were found therein, and that 93 were at least Republican, and only 3 Democratic—it is manifest this fraud was a Democratic one. The disparity in drawing out was enormous.

We correct this poll by adding 93 to the number which the managers count for Lee, and deduct a like number from the vote counted for Richardson. This gives 261 to Lee, and 279 to Richardson.

Campbell's Bridge Precinct.

The secretary of state gives Richardson 284 votes and Lee 111 votes at this poll. The number of names on the poll-list was 395. (Record, p. 432). This ballot-box was also stuffed. The managers here were all Democrats; 31 extra ballots were found in the box. The total Republican vote found in the box was 141. (Brownhamer, Record, p. 431.) In this he is corroborated by the deposition of D. P. Murphy, the United States supervisor. (Record, pp. 432 and 461.) How they were withdrawn is manifest from the testimony of Brownhamer. (Record, p. 431.) He testifies that the manager—

Was not blindfolded; just turned himself onesided and put his hand in the box and felt in there, and would take out a Republican ticket and hand it to John Henry, saying he was working for his country.

Witness adds:

I could take every Repnblcan ticket out of that box if I was blind as a bat; one was soft and thin, the other thick and stiff.

D. P. Murphy (Record, p. 432) testifies:

He turned his side to the table and drew them out very carefully, taking his time as if he was separating the Democratic tickets from the Republican tickets.

He further states that the Republican ticket was very thick, and the

Democratic tickets were very thin. In his report, to which he swears, 30 of the ballots drawn out bore the names of the Republican candidates, and one of the Democratic candidates. Edwin Bethea, witness for the contestee (Record, p. 624), states that he drew the tickets out of the box. He testifies:

I think I can tell a Democratic ticket from a Republican ticket. The Republican ticket was about one and a half inches shorter than the Democratic, a half inch wider, and two or three times as thick.

G. J. Bethea states (Record, p. 628) that the excess was 31 votes; that—

Edwin Bethea was not blindfolded in drawing out the ballots; that the Republican ticket was thicker than the Democratic ticket.

John W. Gourdin (Record, p. 439) testifies that about 30 white men voted the Republican ticket; he testifies that Ed. Bethea, the manager who withdrew the tickets without being blindfolded, cursed them for doing so. He said that "if white men would vote the damn nigger ticket he would throw their votes out."

It is manifest from the testimony that a gross fraud was committed at this poll. Republican tickets were deliberately withdrawn and destroyed, in place of the fraudulent tickets which had been stuffed into the box. We therefore correct this poll by adding 30 votes to Lee, and deducting 30 votes from Richardson, which gives Lee 141 votes, and Richardson 254 votes.

Friendship Precinct.

The secretary of state gives Mr. Lee, at this precinct, 139 votes, and Mr. Richardson 104 votes.

J. B. Hayne, United States supervisor, testifies (Record, p. 420) that there were 157 votes polled for Lee, and 86 for Richardson; that he kept a poll-list, and marked the Republicans "R," and the Democrats "D." That list he furnishes (Record, p. 457), which corresponds with his sworn statement, to wit, Republican 157, and Democratic 86. He states that the Republican ballots found in the box agreed exactly with his tally, viz, 157 votes, and in this he is corroborated by John M. Mace, one of the Democratic managers (Record, p. 621). He states that—

The tickets were emptied on the table, and we picked out the Democratic tickets and the Republican tickets, and opened them as we took them up so as to see if they were folded together. Wall, one of the Democratic managers, took the Democratic tickets to the fireplace to count them. The other manager, Mace, counted the Republican ballots in the presence of the supervisor and found they agreed with his tally—157.

He states further:

We got through with the Republican tickets before Wall got through counting the Democratic tickets. I turned to the fireplace to see what kept him. When we counted the Democratic tickets, instead of 86 there were 104. My tally of the Democratic voters was 86. All the tickets, Republican and Democratic, were then placed back in the box by the managers, and the excess of 18 drawn out by the clerk, all of which were Republican ballots.

Wall, the Democratic manager, denies that he perpetrated any fraud, but the tally-list kept by the United States supervisor and by the managers exactly agreed. It is not denied that 157 Republican ballots were found in the box. The supervisor furnishes a list of 157 Republicans who voted at that poll. There was an excess of 18 ballots either in the box or added after the box was opened. It was a fraudulent excess.

The managers deducted 18 ballots from Lee, giving him only 139 votes, and added 18 votes to Richardson's 86 votes, as found on the list furnished on page 457 of the Record. It is, we think, too clear for argument that a monstrous fraud was attempted and carried out at this poll. We correct it by restoring to Lee the 18 votes, which gives him 157 votes, and deduct the same number of votes from Richardson, which gives him 86 votes; this exactly corresponds with the names found on the tally-list.

Correcting the vote at the precincts above set forth as we have, and leaving untouched the other precincts of Marion County, and counting them as returned by the managers, and the result is as follows:

Vote of Marion County.

| Precincts. | As returned by the State canvassers. | | As corrected by the committee. | |
|----------------------------|---|-------|-----------------------------------|-------|
| | Richardson. | Lee. | Richardson. | Lee. |
| Hymansville..... | 167 | 277 | 167 | 277 |
| Evergreen | 214 | ..... | 214 | ..... |
| High Hill..... | 350 | 74 | 350 | 74 |
| Kentyre Church..... | 190 | 74 | 190 | 74 |
| Stoney..... | 238 | 116 | 238 | 116 |
| Old Ark..... | 52 | 5 | 52 | 5 |
| Mullin's | 488 | 153 | 488 | 153 |
| Marion | 573 | 522 | 520 | 576 |
| Little Rock..... | 469 | 230 | 469 | 230 |
| Mount Nebo..... | 126 | 105 | 126 | 105 |
| Friendship | 104 | 139 | 86 | 157 |
| Berry's X Roads..... | 872 | 168 | 279 | 261 |
| Mars Bluff..... | 201 | 415 | 201 | 415 |
| Campbell's Bridge..... | 284 | 111 | 254 | 141 |
| Aerial | 192 | 56 | 192 | 56 |
| | | | 3,826 | 2,640 |
| Richardson's majority..... | | | 1,186 | ..... |

We find a majority in this county for Richardson of 1,186, in place of 1,565, as returned for him by the State board of canvassers.

CHESTERFIELD COUNTY.

By the table of the secretary of state, Richardson received in this county 1,917 votes and Lee 1,066 votes (Record, p. 228).

The county board of canvassers did not transmit the poll-lists, returns, and other papers appertaining to the election to the secretary of state, as the law requires should be done (Record, p. 228). But the evidence found in various parts of the Record goes to show that this is a Democratic county.

The only poll attacked by Mr. Lee in his notice of contest is Cheraw precinct. Mr. Richardson shows (Record, p. 587) that the clerk of the court certifies that the managers' returns, turned over to him, corresponded with the statement of the secretary of state. This certificate of the clerk is really of no force and effect. He was not by the statute required or expected to make any such certificate. The law is well settled that—

Statute certifying officers can only make their certificates evidence of the fact which the statute requires them to certify. And when they undertake to go beyond this and certify other facts they are unofficial, and no more evidence than the statement of any unofficial person. (See McCrary, sec. 104.)

But there was an election held at Cheraw, and Thomas E. Smith, who was one of the commissioners of election for that county, and was present at Cheraw, testifies as follows:

There were a great many more names on the poll-list than there were ballots in the box, but how many I do not recollect.

Q. Was that defect remedied by the managers; and, if so, how?—A. No, sir; it was not remedied. The managers called on Capt. A. A. Pollock, a lawyer, for his advice, and he said in a case like that he did not know what to do. But if there were more tickets in the box than there were names on the poll-list, he could easily tell them what to do about it.

Q. How did the managers proceed to declare the result of the election under the circumstances?—A. They did not take any steps about there being more names upon the poll-list than ballots, but just counted the ballots in the box.

Q. Did they make any report in regard to their poll-list being in excess of the ballots in the box to your board as county canvassers?—A. They did not, sir.

Q. Did you see any tissue ballots in the Cheraw box while the managers were canvassing the vote?—A. Yes, sir.

Q. Did they count those tissue ballots to ascertain the result of the election?—A. Yes, sir; they did count all of them.

Q. Were you present while the voting was going on during the day?—A. I was there from 7.30 a. m. until they got through at night.

Q. Did you see any tissue ballots voted during the day?—A. No, sir; there were none voted openly.

Q. When was the first time that you saw any of those tissue tickets?—A. Not until the managers opened the box and commenced canvassing that night.

This testimony is not seriously controverted. A ticket printed upon thin tissue paper, and admitted in the argument to be a *fac simile* of some of those found in the Cheraw box, was put in evidence by contestant. It was larger in size than the other "little jokers." And some of the witnesses for contestee deny that tissue ballots were voted, evidently meaning the "little jokers," about two inches long by one inch wide. But two kinds of Democratic tickets were found in the ballot-box at Cheraw, and one was printed on very thin tissue paper. We have seen that the secretary of state had before him no statement of what the vote was at Cheraw. The clerk's certificate is not evidence. How the vote actually stood we do not know, and from the evidence on file we cannot know. It appears that the returns were deposited with the clerk, and the poll-lists turned over to the county auditor by the board of county commissioners. (T. W. Bouchier, Record, p. 590.)

A manifest fraud was perpetrated at Cheraw. It is impossible to determine what the true vote was.

Your committee have no alternative save to reject this poll. We therefore deduct the reported vote of Cheraw, as shown by Mr. Richardson--to wit, for Richardson 483 votes, and for Lee 458 votes—from the vote of the county, leaving for Richardson 1,434 votes, Lee 608 votes, giving a majority to Richardson of 826 votes, in place of a majority of 851 votes, as allowed him by the State board of canvassers.

Having gone over the entire district and purged the polls, precinct by precinct, by the preponderating weight of evidence, and permitting every precinct to stand where the matter was doubtful, and not clearly made out, we tabulate the result as follows:

| Counties. | Actual vote cast as found by the committee. | | Majorities. | |
|---|---|--------|-------------|----------------|
| | Richardson. | Lee. | Richardson. | Lee. |
| Georgetown | 791 | 3,101 | ..... | 2,310 |
| Sumter | 2,395 | 4,272 | ..... | 1,877 |
| Williamsburg | 2,164 | 2,576 | ..... | 412 |
| Horry | 2,186 | 771 | 1,415 | ..... |
| Darlington | 2,395 | 1,884 | 511 | ..... |
| Marlborough | 2,129 | 1,752 | 877 | ..... |
| Marion | 8,826 | 2,640 | 1,186 | ..... |
| Chesterfield | 1,434 | 608 | 826 | ..... |
| | 17,320 | 17,004 | 4,315 | 4,509 4,315 |
| Majority for Mr. Lee in the district..... | | | | 284 |

From which it appears that Samuel Lee was elected by a majority of 284 votes.

We therefore recommend the adoption of the following resolutions:

I. *Resolved*, That John S. Richardson was not elected as a Representative to the Forty-seventh Congress of the United States from the first Congressional district of South Carolina, and is not entitled to occupy a seat in this House as such.

II. *Resolved*, That Samuel Lee was duly elected as a Representative from the first Congressional district of South Carolina to the Forty-seventh Congress of the United States, and is entitled to his seat as such.

A. H. PETTIBONE.
F. JACOBS, JR.
WM. G. THOMPSON.
J. M. RITCHIE.
JNO. T. WAIT.
GEO. C. HAZELTON.
A. A. RANNEY.

EDMUND W. M. MACKEY vs. O'CONNOR.

SECOND CONGRESSIONAL DISTRICT OF SOUTH CAROLINA.

E. W. M. Mackey contested the election for Representative in Congress held in the second district of South Carolina on November 2, 1880, at which M. P. O'Connor was declared elected by the State board of canvassers, and the certificate of election was issued to him.

Notice of contest was served on Mr. O'Connor, and he filed his answer. After the testimony in chief of Mr. Mackey and that in reply of Mr. O'Connor was taken, Mr. O'Connor died, and on May 23, 1881, the governor of South Carolina ordered a special election for a member of Congress "to serve for the remainder of the term for which the said Michael P. O'Connor was elected."

At this special election Mr. Samuel Dibble was voted for and returned elected, and he was sworn in under objection, and occupied a seat in the House as the successor of Mr. O'Connor.

Mr. Dibble protested against any action being taken in this case on the ground that the contest of Mackey vs. O'Connor abated on the death of Mr. O'Connor, and

the House had no longer jurisdiction of that case; that as he was not a party to the pleadings or proofs he should not be bound or affected by either; and that the title to his seat could only be assailed by proceedings *de novo*.

Held, that the right of Mr. Dibble to a seat in the House depended on the title of Mr. O'Connor, and he must be bound by the pleadings, proofs, and decree legitimately growing out of that contest.

The returns are corrected according to the evidence, and it appearing that Mr. O'Connor was not elected, there was no vacancy created by his death and no remainder of a term to be filled, and Mr. Dibble is not entitled to his seat.

The House adopted the majority report.

APRIL 10, 1882.—Mr. S. H. MILLER, from the Committee on Elections, submitted the following

REPORT:

The Committee on Elections, to whom was referred the case of E. W. M. Mackey, contesting the seat of M. P. O'Connor, now filled by Samuel Dibble, who claims to hold the same by virtue of a special election, ordered by the governor of South Carolina, to fill an assumed vacancy occasioned by the death of M. P. O'Connor, occurring subsequent to the date of the election on the 2d of November, 1880, and prior to the assembling of the Forty-seventh Congress, submit the following report:

This contest comes from the second Congressional district of South Carolina, composed of the counties of Charleston, Orangeburg, and Clarendon. The election was held on the 2d day of November, 1880. Two candidates were voted for—E. W. M. Mackey and M. P. O'Connor. The State board of canvassers, acting upon the returns made to them by the county canvassers, declared Mr. O'Connor elected, and the certificate of election was accordingly issued to him.

Whereupon Mr. Mackey commenced this contest. The notice of contest and proofs submitted by Mr. Mackey and the answer and proofs of Mr. O'Connor are contained in Mis. Doc. No. 15 of the present session. The pleadings and proofs are quite voluminous. The notice of contest contains, *inter alia*, the following specific allegations:

2. That at the following voting precincts, to wit, City Hall, Court-house, Market Hall, Palmetto Engine-house, Hope Engine-house, Eagle Engine-house, Washington Engine-house, Marion Engine-house, Niagara Engine-house, and Ashley Engine-house, in the city of Charleston; and Camp Ground, Enterprise, Twenty-two-mile House, Cross Roads, Hickory Bend, Biggin Church, Pinopolis, St. Stephens, Blackville, Ben Potter's, Moultrieville, and Henderson's Store, in the county of Charleston; and Orangeburg, Branchville, Brown's, Corbettsville, Cedar Grove, Conner's, Fort Motte, Ayers', Gleaton's, Lewisville, Easterlin's, Rowesville, Jamison's, Bull Swamp, Ziegler's, Washington Seminary, and Bookhardt's, in the county of Orangeburg; and Fulton, Fork, Witherspoon's, Jordan, Manning, Packsville, Calhoun, and Motts, in the county of Clarendon, a deliberate system of ballot-box stuffing was practiced by or with the knowledge and assent of the managers of the election of said precincts, all of whom, without a single exception, were of the same political faith as Mr. O'Connor, and in every instance his political partisans and supporters; that by reason thereof the vote actually cast for Mr. Mackey was larger, and the vote actually cast for Mr. O'Connor was smaller, than appears on the face of the returns made by the managers of elections at the voting precincts aforesaid; that the difference between the vote as actually cast and the vote as returned by the managers aforesaid arises from the fact that at each of the aforesaid polls numerous ballots bearing Mr. O'Connor's name for Congress were fraudulently placed in the ballot-box for the purpose of creating an excess of votes over voters, and thereby compelling the managers to draw out and destroy the excess of ballots thus created in order to reduce the number of ballots in the

box to the number of names on the poll-list; that in drawing out of the box at each poll the excess of ballots, fraudulently created as aforesaid numerous ballots bearing Mr. Mackey's name for Congress, and which had been legally voted, were drawn out and destroyed, and in their place was counted a corresponding number of ballots with Mr. O'Connor's name for Congress thereon which had not been legally voted.

3. That the returns made to the State board of canvassers by the commissioners of elections of Charleston, Orangeburg, and Clarendon Counties of the result of the election in said counties do not contain true and correct statements of the votes cast for a member of Congress in said counties.

4. That in Orangeburg County the commissioners of elections refused to count and canvass and include in their statement of the result of the election the votes cast, canvassed, and duly returned for a member of Congress at the following voting precincts, to wit: Louisville, Fort Motte, Fogles, and Bookhart.

5. That in Charleston County the commissioners of elections refused to count and canvass and include in their statement of the result of the election the votes cast, canvassed, and duly returned for a member of Congress at the following voting precincts, to wit: Calamus Pond, Strawberry Ferry, Biggin Church, Black Oak, Ten-Mile Hill, Brick Church, and Enterprise.

6. That at Haut Gap voting precinct in the county of Charleston 1,037 were cast for contestant, and 46 votes were cast for contestee, and at the close of the election the said votes were duly counted and canvassed, and that the ballots cast at the election, together with a statement of the result and the poll-list at the close of the canvass by the managers, were put in the box, the box covered with paper and sealed with wax and delivered to J. H. Wilson, one of the managers, to be delivered by him to the county canvassers. That the said manager brought the box with the seals unbroken and delivered it to the county canvassers; that at the time of its said delivery to the county canvassers it contained the ballots as cast; that subsequent to its delivery to the county canvassers the said box was violated, and when publicly opened the return could not be found; that the ballots had been changed and other ballots fraudulently placed therein, and when so counted by the county canvassers they announced 1,051 votes for Mr. O'Connor and 19 votes for Mr. Mackey.

There are other allegations of fraud: illegal and fraudulent conduct of officers of elections; illegal and fraudulent tampering with ballot-boxes, and false returns of the actual number of votes cast, but those above specified the committee regard as the most material.

The answer of Mr. O'Connor denies the second and third allegations, virtually admits the fourth and sixth, and admits the fifth, and avers that threats, acts of intimidation and violence were perpetrated by the partisans and supporters of Mr. Mackey, thus overawing the peaceable and quiet colored men who desired to vote for him (Mr. O'Connor), and preventing them from so doing, many, through fear, staying at home and not coming out to vote, and many by duress voting for Mr. Mackey against their will.

After the testimony in chief of Mr. Mackey, and that in reply of Mr. O'Connor had been taken, Mr. O'Connor died, on April 26th, 1881, and on the 23d day of May, 1881, the governor of South Carolina, assuming that a vacancy was caused in the representation of the State, by Mr. O'Connor's death, ordered a special election to fill the same. At that special election Mr. Samuel Dibble, the sitting member, was voted for and returned elected, receiving but 7,344 votes, in a district that on November 2, 1880, Mr. O'Connor claimed gave him 17,569 votes.

There was no opposing candidate, the Republicans of the district holding that Mr. Mackey, and not Mr. O'Connor, had been elected on November 2, 1880, and therefore the death of the latter had created no vacancy. Upon the certificate of election presented by Mr. Dibble he was sworn in, under objection, and now occupies a seat in the House as the successor of Mr. O'Connor.

At the commencement of the hearing, the sitting member protested against the committee taking any action whatever upon the case, on the ground that the contest of Mackey vs. O'Connor abated on the death of Mr. O'Connor, and that the House had no longer jurisdiction of that

case. He contended that inasmuch as he was not a party to the pleadings or proofs, he should not be bound or affected by either; that the only way the title to his seat could be assailed was by commencing proceedings *de novo*, and permitting him to defend Mr. O'Connor's claim.

In the opinion of the committee this position is utterly untenable. The contestant, Mr. Mackey, bases his claim upon the ground that he, and not Mr. O'Connor, received the greatest number of legal votes at the general election held November 2, 1880. To establish his claim, the provisions of the statute regulating the mode and manner of contesting an election were invoked and complied with. Notice of contest was duly served upon Mr. O'Connor, who, in turn, put in an answer thereto, and upon the issue thus made up a large mass of testimony, as heretofore stated, was taken.

The right of the contestant, as also of the people of that Congressional district, who, after all, are the real parties in interest, to have the facts of that election inquired into and adjudicated by the House, cannot be changed by the fact of the death of the contestee. If the contestant really received at that election, as he claims, the largest number of legal votes, it is his right and the right of the people of that district that he be awarded the seat he was chosen to fill. The committee, however, are of opinion that Mr. Dibble, if elected to any position, was elected to fill a vacancy created by the death of Mr. O'Connor, and for his unexpired term.

This conclusion is emphasized by the significant language used in the proclamation of the governor ordering the special election by virtue of which Mr. Dibble claims the seat. It is as follows:

STATE OF SOUTH CAROLINA,
EXECUTIVE CHAMBER,
COLUMBIA, S. C., May 23, 1881.

To the commissioners of election and the managers of election for the counties of Charleston, Orangeburg, and Clarendon, composing the second Congressional district of the State of South Carolina:

Whereas a vacancy in the representation of the said second Congressional district in the House of Representatives of the United States of America has happened, by the death of Michael P. O'Connor, who, at the general election held November 2, A. D. 1880, was chosen a member of said House of Representatives for said Congressional district for the term of two years from March 4, A. D. 1881; and whereas the Constitution of the said United States in such cases requires the executive authority of the State to issue a writ of election to fill such vacancy:

Now, therefore, you and each of you are hereby required to hold an election in accordance with the laws for holding general elections for a member of the said House of Representatives for the said Congressional district, TO SERVE FOR THE REMAINDER OF THE TERM FOR WHICH THE SAID MICHAEL P. O'CONNOR WAS ELECTED; the polls to be opened at the various places of election in the said counties on Thursday, the ninth day of June, A. D. 1881, by the various sets of managers for those places respectively.

Given under my hand and the seal of the State of South Carolina, this 23d day of May, in the year of our Lord one thousand eight hundred and eighty-one.

JOHNSON HAGOOD
Governor.

R. M. SIMS,
Secretary of State.

The right of Mr. Dibble to a seat in the House depends upon the title of Mr. O'Connor. By the very language of the proclamation he was a candidate "to serve for the remainder of the term for which the said Michael P. O'Connor was elected;" and if it appears from the proofs that Mr. O'Connor was not elected, then there was no vacancy created by his death, no remainder of a term to be filled, and Mr. Dibble could have no rights to be prejudiced by any pleadings or agreements made

by Mr. O'Connor. In consenting to be a candidate to serve for the remainder of the term, for which Mr. O'Connor claimed to have been elected, Mr. Dibble rested his title to the seat in dispute upon the title of his predecessor, and he must be bound by the pleadings, proofs, and decree growing legitimately out of that contest. To insist that Mr. Mackey should abandon the testimony taken in the case prior to the death of Mr. O'Connor—and all of it was taken prior thereto except the evidence of contestant in rebuttal, and which is not material so far as the true issue is concerned—and commence anew a contest with Mr. Dibble, involving the same specifications of contest, is, in the opinion of the committee, not only vain but in conflict with every principal of law and equity.

It was claimed by the counsel of Mr. Dibble in argument that if, after the testimony had been taken Mr. O'Connor had resigned, an election ordered by the governor to fill the assumed vacancy, and a successor elected, the contest between the original parties would abate as fully as if the contestee had died. These propositions must both stand or fall together. If such was the law there would be nothing to prevent a contestee from abating a contest at any time at his own volition. If, after the testimony had been taken, the contestee should be forced to conclude that his case was hopeless, it would only be necessary for him to resign, have the governor order a new election, again be a candidate, with a hope that under circumstances more favorable to him and his party he might succeed. Assured that his former certificate was proven worthless he would have nothing to lose, and if successful in receiving a majority at the second election he would be enabled thereby, by his voluntary resignation, to escape the effect of the frauds perpetrated by him or his partisan supporters at the first election. It is only necessary to state the proposition to make manifest its fallacy.

After the committee had settled the foregoing question the sitting member made a second motion to suppress the testimony taken in the case, alleging that the testimony as printed was not the testimony as originally taken, but that the same had been subsequently altered and perverted by the contestant. In support of this motion Mr. Dibble submitted a number of *ex parte* affidavits. It was further charged that the technical requirements of the statute in reference to taking testimony in contested elections had not been complied with, either in the transcribing of the depositions in their attestation or in the manner of their being forwarded to the Clerk of the House. To meet the first and really only serious charge the contestant filed the affidavits of eighty-three of the ninety-four witnesses examined by him, each of whom deposed that he had carefully read his deposition, as contained in the printed record, and that the same was in every particular the deposition made by him before the notary public, and that there had been no garbling or alteration in or addition thereto, and they each again made oath to the truth of the matters and things therein contained. The notary who, by agreement of Mr. Mackey and Mr. O'Connor, took the testimony stenographically, also made oath that in the limited time given him he had compared with his stenographic notes the depositions of fourteen witnesses as printed in the record, and that the depositions as printed correspond in every particular with the original stenographic notes of such depositions. The names of the witnesses are: S. W. McKinlay, J. G. Smalls, J. J. Lessene, G. H. F. Graham, St. Cyprian Delany, F. H. Carmand, George E. Hart, Benjamin Moultrie, J. J. Moore, M. Caulfield, Nestor Currey, E. A. Webster, T. C. Albergotti, and T. A. Huguenin, and their testimony will be found in the record by reference to the index thereto.

After due consideration of these *ex parte* affidavits of the witnesses themselves, and of the notary and stenographer, the committee are satisfied that the testimony as printed is the same as when first taken, and that it has not been in any way altered or perverted to the prejudice of Mr. Dibble. There was ample time given Mr. Dibble to have obtained evidence from the stenographer that the deposition of any witness, as printed, was compared by him with the original stenographic notes in his possession, and that the same had been altered, perverted, or changed; yet it is somewhat remarkable that no such evidence has been offered or suggested to the committee.

The provisions of the statute in regard to the form and manner of taking and forwarding testimony in contested-election cases are merely directory, and therefore the only question which the committee has deemed it necessary to consider upon this point has been whether the essential provisions of the law had been complied with; that is, had the testimony of the witnesses been correctly reported by the notary and stenographer, and had that testimony been forwarded to the House. If Mr. Dibble had shown by proper evidence that the depositions before the committee were not the depositions of the witnesses (and he could have done this by the *ex parte* affidavit of the stenographer, if such was the case), he would have disclosed a matter fatal to their consideration.

But, inasmuch as there is but a single affidavit tending to show such a state of facts, which is contradicted directly, so far as the notary had examined his original notes, by the evidence of the stenographer, and also by the affidavits of eighty-three of the witnesses themselves, it surely cannot be considered that he has maintained the truth of his charge. The burden of proof was upon him to reasonably satisfy the committee, by a preponderance of evidence, of the truth of the facts alleged in his protest; this the committee finds he has not done. The affidavits submitted by the contestant in answer to Mr. Dibble's protest are uncontradicted by any affidavit filed by the latter, and they establish the fact that the testimony, as found in the printed record, is in every particular the testimony actually given by the witnesses, and taken stenographically by the notary, and afterwards transcribed by his direction. It is not controverted that the evidence was, by the agreement of Mr. Mackey and Mr. O'Connor, taken stenographically by the notary. These stenographic notes are the original evidence of what the witnesses deposed. They were taken necessarily in the notary's presence, who was also the stenographer. They were really the depositions in the cause. By the stipulations it was agreed that these stenographic notes should be afterwards transcribed. The manner in which they were transcribed, and by whom transcribed, is a matter of no importance, providing they were transcribed correctly, since the notary public accepted the work as performed by the copyists, and certified to the same as being the depositions taken by him. The fact that the contestant assisted in making transcripts of this evidence does not detract from its correctness. It was within the power of Mr. Dibble to have shown by the stenographer, in whose possession the original notes are yet, that the evidence of a single witness, as printed, was subsequently compared by him, and found by him to be incorrect, if such had been the case. The committee has a right to conclude, in view of the persistency manifested by counsel in this case, that it was impossible to get such evidence from the stenographer. The committee, therefore, conclude that the depositions as printed were the depositions of the witnesses actually taken by the stenographer, and they therefore proceed to a consideration of the testimony to determine the merits of the case.

Under the election laws of South Carolina the governor of the State, prior to each general election, appoints for each county in the State three commissioners of elections. These commissioners of elections appoint for each poll in their respective counties three managers of elections (Rev. Stat., Title II, chap. viii, sec. 2). By the managers so appointed the election at each poll is conducted, and at its close the votes counted and a return thereof made to the commissioners of elections (15 Stat., 171), who, on the Tuesday next following the election, meet and organize as a board of county canvassers, and from the returns made to them by the managers, they count or canvass the votes of the county and make such statements thereof to the State board of canvassers as the nature of the election requires—making for Representative in Congress “separate statements of the whole number of votes given in such county” (Rev. Stat., Title II, chap. viii, secs. 15–18). From these statements of votes made by the county canvasser, the board of State canvassers determine and certify the number of votes cast for the different candidates for the various offices voted for, and declare what persons have been by the greatest number of votes duly elected to such offices. (*Ibid.*, secs. 24–26.)

Acting upon the returns made by the county canvassers of Charleston, Orangeburg, and Clarendon, the counties composing the second Congressional district of South Carolina, the State board of canvassers certified and declared that at the election held November 2, 1880, the vote cast for Representative in Congress from the said district was as follows (Rec., p. 11):

| | M. P. O'Connor. | E. W. M. Mackey. |
|-----------------------------------|-----------------|------------------|
| Charleston..... | 11,429 | 8,112 |
| Orangeburg | 3,627 | 2,712 |
| Clarendon | 2,513 | 1,473 |
| Total..... | 17,569 | 12,297 |
| Majority for O'Connor..... | 5,272 | |

Although the vote certified by the State board of canvassers is a correct aggregate of the vote returned to it by the county boards of canvassers, it is not a true statement of the result of the election, because the returns made to the State board of canvassers by the county canvassers of Charleston and Orangeburg, upon which the State board acted, were not full and correct statements of the vote cast in those counties. Had the county canvassers in the three counties in the district counted the vote as returned to them by the managers of the election of the several precincts in the several counties, the result would have been a majority of 879 for Mr. Mackey. These managers in every instance and at every poll in the district were of the same political faith, and were the partisan supporters of Mr. O'Connor. The majority certified for Mr. O'Connor by the county board of canvassers, all of whom were Democrats, was obtained by entirely reversing the vote of one, Haut Gap, and leaving out in the final count seven precincts in Charleston County, to wit: Black Oak, Strawberry, Calamus Pond, Biggin Church, Brick Church, Ten Mile Hill, and Enterprise; and four in Orangeburg County, to wit: Fogles, Fort Motte, Lewisville, and Bookhardt's. The committee briefly call attention to these twelve precincts. There is no dispute about the vote in any others.

HAUT GAP.

In the statement of the vote of Charleston County, made by the county canvassers of that county, were included 1,052 votes for Mr. O'Connor and 19 for Mr. Mackey, as having been cast at Haut Gap precinct, when in truth and in fact the vote actually cast and counted by the managers at that poll was 46 for Mr. O'Connor and 1,037 for Mr. Mackey. Such was the return made by the managers, and sealed up in the box, but after the delivery of the ballot box to the county canvassers the seals were broken, the returns of the managers abstracted from the box, and the ballots originally cast by the voters taken out, and others substituted therefor, so that when the box was publicly opened by the county canvassers, instead of there being in it 46 votes for Mr. O'Connor and 1,037 for Mr. Mackey, and a return to that effect, there were 1,052 votes for Mr. O'Connor and only 19 for Mr. Mackey, and no return whatever. Without making any effort to ascertain what had become of the return, the county canvassers counted the fraudulent ballots found in the box and included the result of their count in the statement of the vote of the county, although before their adjournment positive proof of the correct vote and of the violation of the box was furnished them.

BLACK OAK.

The vote as returned by the managers for this precinct was :

| | |
|-----------------------|-----|
| For Mr. Mackey | 393 |
| For Mr. O'Connor..... | 11 |

This vote is established by the evidence of S. W. McKinlay, one of the election supervisors (p. 163), and by the sworn return of the board of managers of the precinct (p. 167), and disputed by no one.

STRAWBERRY FERRY.

The vote as returned by the managers for this precinct was :

| | |
|------------------------|-----|
| For Mr. Mackey..... | 573 |
| For Mr. O'Connor | 90 |

This vote is established by John G. Smalls, one of the supervisors, who testified that the number of ballots corresponded with the number of names on the poll-list; that the managers counted and canvassed the votes in his presence, declared the result, and signed the return in his presence (p. 168). Two of the managers who conducted the election at the poll were examined by Mr. O'Connor, and they do not deny the correctness of the vote (pp. 420, 433).

CALAMUS POND.

The vote as returned by the managers of this precinct was :

| | |
|------------------------|-----|
| For Mr. Mackey..... | 511 |
| For Mr. O'Connor | 119 |

This vote is established by J. J. Lessene, one of the supervisors, and signed by him and the Democratic supervisor (pp. 172, 173). One of the managers was examined by Mr. O'Connor, and he did not attempt to deny the correctness of the vote.

BIGGIN CHURCH.

The vote as returned by the managers of this precinct was :

| | |
|------------------------|-----|
| For Mr. Mackey..... | 380 |
| For Mr. O'Connor | 63 |

This vote is established by the evidence of G. H. F. Graham, one of the supervisors (p. 178). He testifies that there was an excess of 14 votes in the box at the close of the polls, as compared with the poll-lists; that all the Republican voters folded up their tickets in the presence of the managers to show them that they voted but one ticket; that in drawing out the excess of 14 votes the manager drew out 13 Republican tickets and but one Democratic ticket; and that at the close of the election the managers counted the votes as above, and made out and signed the return and put it in the box. Two of the managers were examined by Mr. O'Connor, but neither denied the correctness of the above vote.

BRICK CHURCH.

The vote as returned by the managers of this precinct was :

| | |
|------------------------|-----|
| For Mr. Mackey..... | 732 |
| For Mr. O'Connor | 16 |

This vote is established by F. H. Carmand, one of the supervisors. He testified that there was no excess of ballots, that the managers counted and canvassed the votes in his presence, made a return thereof and sealed it up, and that it corresponded with the above (p. 185). Mr. O'Connor examined one of the managers, but he did not dispute the above in any particular.

TEN-MILE HILL.

The vote as returned by the managers of this precinct was :

| | |
|------------------------|-----|
| For Mr. Mackey..... | 603 |
| For Mr. O'Connor | 5 |

This vote is established by G. St. Cyprian Delany, one of the supervisors. He testified that he saw the managers canvass and count the votes and make out and seal up the return, and that it corresponded with the above statement (p. 180). Mr. O'Connor examined one of the managers (T. B. Curtis), but he does not deny the correctness of this vote.

ENTERPRISE.

The vote as returned by the managers of this precinct was :

| | |
|------------------------|-----|
| For Mr. Mackey..... | 385 |
| For Mr. O'Connor | 161 |

This return is established by Robert Simmons, one of the supervisors (p. 190). He testifies that the Republicans voted an open ticket until about 200 had voted, when Mr. Schaffer, a leading Democrat, objected, and said if it was not stopped he would protest the election and the whole box would be thrown out. After that the Republican voters folded their tickets. At the close of the poll there was an excess of 139 ballots in the box, and one of the Democratic managers drew out this excess. In doing so he drew out 101 Republican tickets and only

38 Democratic tickets. After this was concluded the managers canvassed and counted the votes. Mr. O'Connor examined the Democratic supervisor and one of the three managers, both of whom corroborate the correctness of the vote returned after drawing out the 139 ballots referred to above.

FOGLE'S.

The vote as returned by the managers of this precinct was:

| | |
|------------------------|-----|
| For Mr. Mackey | 254 |
| For Mr. O'Connor | 40 |

This vote is established by Nester Curry, one of the supervisors, who testifies that he saw the managers canvass and count the vote, and sign and seal the return (p 282). This is corroborated by the evidence of T. C. Albergotti, one of the county canvassers (p. 291), and it is disputed by no one.

FORT MOTTE.

The vote as returned by the managers of this precinct was:

| | |
|------------------------|-----|
| For Mr. Mackey | 279 |
| For Mr. O'Connor | 85 |

This vote is established by the evidence of Benj. Moultrie (p. 279), T. C. Albergotti (p. 291), and by one of the managers, James A. Peterkin, and disputed by no one. It is uncontradicted that the Republicans voted an open ticket, showing that they voted but one ticket, yet at the close of the poll there was an excess of ten tickets in the box. In drawing out this excess the Democratic managers drew out 9 Republican tickets and 1 Democratic.

LEWISVILLE (OR SAINT MATHEWS).

The vote as returned by the managers of this precinct was:

| | |
|------------------------|-----|
| For Mr. Mackey | 700 |
| For Mr. O'Connor | 236 |

This return is established by J. J. Moore, one of the supervisors (p. 286), and by T. C. Albergotti (p. 291). The evidence is uncontradicted that all the Republican voters came to the ballot-box with an open ticket and folded it up in the presence of the managers (pp. 287, 628), showing that each voted but one ticket, and yet at the close of the poll a large excess of tickets was found in the box. There were forty-five packages of tickets containing more than one ballot (generally from 3 to 5 and sometimes as high as 7), all of them Democratic, the narrow tickets being folded inside of the larger one (p. 287). On the demand of the Republican supervisor all the tickets thus found in each package were destroyed but the inside one, but notwithstanding this there was still an excess found in the box of 52 ballots. In drawing this excess out the manager drew out 40 Republican tickets and only 12 Democratic. After this "purification" there still remained the vote as above returned by the Democratic managers.

BOOKHARDT'S.

The vote as returned by the managers of this precinct was:

| | |
|------------------------|-----|
| For Mr. Mackey | 212 |
| For Mr. O'Connor | 69 |

The above vote is established by the evidence of George E. Hart, one of the supervisors, and corroborated by the evidence of A. Lathrop, who was cross-examined by Samuel Dibble, the sitting member. The managers of the election, after they had counted the ballots as above, put the ballot-box into the hands of George E. Hart, one of the supervisors, for delivery to the county canvassers; Hart handed it over to Mr. Lathrop, who took it to the board of county canvassers, but the board declined to receive the box, and refused to count the ballots therein. The managers of the election were not even called by the contestee to contradict the result of the vote in the precinct as testified to by Mr. Hart, who saw them count it as above on the evening of the election, and whose return is also in evidence.

This is a brief statement of the number of votes cast and canvassed at these eleven polls rejected by the county board of canvassers of Charleston and Orangeburg Counties. It is true that Mr. O'Connor in his answer set up that these polls were thrown out because "threats, acts of intimidation, and violence were perpetrated by the partisans and supporters of Mr. Mackey," "to the serious interference with the managers of election in the discharge of their duties, and to the prevention of a free and fair election," but he utterly failed to establish the charges in his answer. Not a single manager testifies that they were overawed and forced to make a miscount; the farthest they go is that they believe many colored men would have voted for Mr. O'Connor if they had been left to their own free choice. The committee find that every allegation set up by Mr. O'Connor for the rejection of these polls is unsupported even by the testimony of his own witnesses. The reports of the contested-election cases for the last eighteen years do not show a more systematic effort to override the will of the people as expressed at the ballot-box than does this case. Ballot-boxes were stuffed in the interest of Mr. O'Connor, and when the excess was discovered on opening the box, the drawing-out process always resulted in the interest of Mr. C'Connor. A whole poll—Haut Gap—was reversed, making a fraudulent change of over two thousand votes in favor of Mr. O'Connor, and to cap the climax of fraud and perjury perpetrated by the managers of the election—all of whom were Democrats—precinct after precinct that had given Mr. Mackey majorities was thrown out by the county canvassers—all of whom were Democrats—until a false, fraudulent, and perjured majority was exhumed from this iniquity of 5,272 in favor of Mr. O'Connor.

But aside from this, it was the duty of the county canvassers of Charleston and Orangeburg to have gone forward and canvassed the vote returned to them from these 11 precincts. In the election laws of South Carolina, so far as a member of Congress is concerned, there is absolutely nothing authorizing county canvassers to pass upon the validity of an election, and to decide whether or not the votes there cast are to be counted and canvassed. Such is the effect of the decision of the supreme court of that State, *ex parte Mackey et al. vs. Canville et al.*, rendered upon an appeal taken by the contestant upon an application to one of the circuit judges for the writ of mandamus to compel the county canvassers of Charleston to count the votes of two of the polls rejected by them. Under the decision of the supreme court the vote of the eleven polls rejected by the county canvassers of Charleston and Orangeburg ought now to be added to the vote certified by the State board of canvassers, provided the vote of those polls is established by the evidence of contestant. In the opinion of the committee, the vote of each of these polls is fully established by the testimony, and

there is nothing whatever in the testimony of contestee to invalidate the election of any one of them.

By making the necessary correction in the vote of Haut Gap, because of the fraudulent change in the vote of that precinct, and by adding the vote of the eleven polls rejected by the county canvassers of Charleston and Orangeburg, the contestant would have a majority of 879 votes, according to the returns made by the managers of the election, as will be seen by the following table:

| | M. P. O'Connor. | E. W. M. Mackey. |
|--|--------------------|---------------------|
| Vote certified and declared by the State board of canvassers..... | 17, 569 | 12, 297 |
| Deduct the vote fraudulently returned by the county canvassers of Charleston County as the vote of Haut Gap..... | 1, 052 | 19 |
| | 16, 517 | 12, 278 |
| Add the correct vote of Haut Gap, as it was counted and returned by the managers of the election..... | 46 | 1, 037 |
| | 16, 563 | 13, 315 |
| Add the vote of the following polls, which the county canvassers of Charleston and Orangeburg refused to count and canvass as required by law, to wit: | | |
| Calamus Pond..... | 119 | 511 |
| Strawberry..... | 90 | 573 |
| Biggin Church..... | 63 | 380 |
| Enterprise..... | 161 | 385 |
| Brick Church..... | 16 | 732 |
| Ten-Mile Hill..... | 5 | 603 |
| Black Oak..... | 11 | 398 |
| Fogle's | 40 | 254 |
| Fort Motte | 85 | 279 |
| Lewisville..... | 236 | 700 |
| Bookhardt's | 69 | 212 |
| Total vote as counted and returned by the managers of the election..... | 17, 458 | 18, 837 |
| Majority for E. W. M. Mackey | | 17, 458 |
| | | 879 |

BALLOT-BOX STUFFING.

Although this majority of 879, shown to have been returned by the managers of the elections to the county canvassers, is sufficient to entitle the contestant to be seated, nevertheless the committee cannot refrain from calling attention to the fact that the testimony shows that the contestant actually received a very much larger majority, and that it was reduced to 879 by a uniform system of ballot-box stuffing—by causing to be put in the ballot-boxes at a majority of the polls in the Congressional district an excess of votes over voters on the poll-lists, and then by drawing out a number of ballots equal to that excess—an operation by which the vote of Mr. Mackey was reduced, and the vote of Mr. O'Connor greatly increased.

In reference to these frauds the contestant in his notice of contest (specification 2, Record, p. 1) charged that at certain precincts the vote actually cast for him was larger and the vote actually cast for the contestee was smaller than appeared on the face of the returns made by the managers of the election at those precincts; that the difference between the vote as actually cast and the vote as returned by the managers arose from the fact that at each of those polls numerous ballots, bearing contestee's name, were fraudulently placed in the ballot-box for the purpose of creating in them an excess of votes over voters, and thereby compelling the managers to draw out and destroy the excess of ballots thus created, in order to reduce the number of ballots in the box to the

er of names on the poll-list; that in drawing out of the box at those polls the excess of ballots so created, numerous ballots contestant's name thereon, which had been legally voted, were put out and destroyed, and in their place was counted a corresponding number of ballots with contestee's name thereon which had not legally voted.

ther in the answer of the contestee, nor in the testimony produced behalf, is there any denial of the fact that, at the polls referred the contestant, the ballots in the boxes, upon being counted at the of the election, were found to be largely in excess of the number sons recorded on the poll-lists as having voted at those polls. The to which the ballots in the boxes exceeded the number of names poll-lists at these polls is indicated in the following table, which its, according to the testimony, the number of names recorded on poll-list kept at each poll by the managers, the number of ballots in the box, and the amount of the excess of ballots over voters :

| | Number of names on poll-list. | Number of ballots in the box. | Excess of ballots over voters. |
|---------------------------|-------------------------------|-------------------------------|--------------------------------|
| CHARLESTON COUNTY. | | | |
| ll..... | 1,729 | 1,934 | 205 |
| ouse..... | 628 | 763 | 135 |
| Hall..... | 1,125 | 1,196 | 71 |
| o E. H..... | 1,501 | 1,568 | 67 |
| . H..... | 1,218 | 2,289 | 1,071 |
| . H..... | 1,483 | 2,002 | 569 |
| gton E. H..... | 458 | 837 | 379 |
| E. H..... | 1,141 | 1,798 | 657 |
| E. H..... | 912 | 1,150 | 238 |
| E. H..... | 547 | 642 | 95 |
| round..... | 870 | 889 | 19 |
| ise..... | 546 | 685 | 139 |
| two Mile House..... | 599 | 604 | 5 |
| oads..... | 222 | 231 | 9 |
| House..... | 723 | 754 | 31 |
| Pleasant..... | 826 | 1,016 | 190 |
| Church..... | 467 | 481 | 14 |
| is..... | 216 | 255 | 39 |
| ephen's..... | 532 | 600 | 68 |
| lle..... | 241 | 248 | 7 |
| ter's..... | 163 | 222 | 59 |
| son's Store..... | 184 | 219 | 35 |
| | 16,281 | 20,388 | 4,102 |
| ORANGEBURG COUNTY. | | | |
| Durg C. H..... | 1,093 | 1,165 | 72 |
| ville..... | 395 | 409 | 14 |
| ..... | 156 | 174 | 18 |
| sville..... | 488 | 582 | 94 |
| rove..... | 304 | 332 | 28 |
| s..... | 199 | 230 | 31 |
| otte..... | 377 | 387 | 10 |
| 's..... | 388 | 417 | 29 |
| ille..... | 417 | 436 | 19 |
| in's..... | 986 | 988 | 52 |
| ille..... | 449 | 556 | 107 |
| n's..... | 238 | 264 | 26 |
| ramp..... | 406 | 477 | 71 |
| 's..... | 384 | 554 | 170 |
| ington Seminary..... | 290 | 394 | 104 |
| rdt's..... | 465 | 544 | 79 |
| | 281 | 298 | 17 |
| | 7,266 | 8,207 | 941 |
| CLARENDON COUNTY. | | | |
| ..... | 854 | 502 | 148 |
| poon's..... | 476 | 552 | 76 |
| ..... | 648 | 906 | 258 |
| g..... | 634 | 1,032 | 399 |

| | Number of names on poll-list. | Number of ballots in the box. | Excess of ballots over voters. |
|------------------------------------|-------------------------------|-------------------------------|--------------------------------|
| CLARENDON COUNTY—Continued. | | | |
| Packsville | 377 | 455 | 78 |
| Calhoun | 1,043 | 1,288 | 245 |
| | 3,532 | 4,736 | 1,204 |
| <i>Recapitulation</i> | | | |
| Charleston County..... | 16,281 | 20,383 | 4,102 |
| Orangeburg County..... | 7,266 | 8,207 | 941 |
| Clarendon County..... | 3,532 | 4,736 | 1,204 |
| | 27,079 | 33,326 | 6,247 |

This large excess, occurring, as it did, at over two-thirds of the polls in the district, warrants the conclusion that the excess at those polls was not the result of mere accident or local manipulation, but of a well-defined and matured plan.

It is in evidence that the Republican voters throughout the district, in accordance with the advice publicly given them (and at one meeting in the presence of Mr. Dibble, the sitting member), by the contestant and his partisan supporters, went to the polls with open tickets, exhibiting them to the managers and supervisors so that they could see that they each had but one ballot, folding them in the presence of these officers, that they might be satisfied that they cast but one vote. In addition to this thee evidence discloses the fact that at every precinct throughout the district the three managers and clerk, without exception, were the political partisans and supporters of Mr. O'Connor. The only officer present of the same political faith with Mr. Mackey was the supervisor. If he did not closely watch the voters as they approached the polls, and supervise the clerk whose duty it was to take down their names, it was possible for the clerk to add names to the poll-list who had not voted. While thus employed it was possible for one of the three managers to manipulate the ballot-box, which actually was done at 45 precincts, and 6,247 votes stuffed into these 45 ballot-boxes by the managers thereof, or by their connivance. To assume that this was done by the "peaceable and quiet colored men" who supported Mr. Mackey, in the presence of these managers of opposite political faith, is to attribute a degree of stupidity on the part of these Democratic managers, and of courage on the part of these "peaceable and quiet colored men" who supported Mr. Mackey which is not warranted by the evidence in this case. The very violence of the presumption is its rejoinder.

Without the connivance of these managers of the election it is very evident that the ballot-boxes could not have been stuffed to the extent that they were; and it is equally as evident that without their active co-operation the contestee could not have benefited to the extent that the testimony proves he did, by the process of drawing out and destroying surplus ballots.

The evidence shows that two kinds of Democratic ballots were generally used at every poll, one larger than the other, and the smaller one as a rule printed on fine tissue paper, so that it was possible to fold a number of the smaller ballots within the folds of the larger one. In the boxes at many polls ballots bearing the name of Mr. O'Connor were frequently found inclosed in ballots also bearing his name and folded together in packages of 2, 3, 4, and upwards as high as 23.

A further proof that the excess of ballots found in the ballot-boxes was put there by the partisans and supporters of Mr. O'Connor is afforded by the fact that at several polls the number of Democratic tickets, with the name of the contestee thereon, found in the box was actually greater than the whole number of persons who voted at those particular polls. Such was the case at the following polls in Charleston County:

| | Number Democratic tickets found in ballot-boxes. | Whole number of voters. | Excess of Demo- cratic tickets over voters. |
|-------------------------------|--|----------------------------|---|
| Hope Engine-house | 1,683 | 2,218 | 465 |
| Washington Engine-house | 589 | 458 | 131 |
| Ben Potter's | 177 | 163 | 14 |

A REMARKABLE DOCUMENT.

In accounting for this systematic pollution of the ballot-box the committee is not left to inference. It is in evidence that the chief supervisor of the State instructed the precinct supervisors to set forth in their reports the number of ballots, if any, found in excess of the names on the poll-list, and to designate the character of the ballots drawn out and destroyed by reason of such excess. The chairman of the Democratic executive committee of the State, assuming upon which party the loss was to fall by the process of drawing out and destroying ballots, and to prevent, if possible the evidence from being obtained of the extent to which the Democratic candidates should profit by that process, issued the following circular, dated seven days prior to the election:

ROOMS OF THE STATE DEMOCRATIC EXECUTIVE COMMITTEE,
Columbia, S. C., October 27, 1850.

To _____,

County Chairman:

DEAR SIR: The attention of the State executive committee has been called to the instructions issued by Chief Supervisor Poinier to the supervisors of election in this State. These supervisors are directed to report "the number of ballots drawn out of the ballot-box and destroyed by the managers of election, because of the excess of votes over names on the poll list"; also the number of such ballots that "bore the names of Republican candidates" and the number which bore the names of the Democratic candidates and Greenback candidates.

The instruction to report the character of the ballots drawn out and destroyed is unauthorized and illegal. The State election law, by which alone you are governed, requires (see compilation of Election Laws, section 12) that "if more ballots shall be found on opening the box than there are names on the poll-lists, * * * one of the managers or the clerk, without seeing the ballots, shall draw therefrom and immediately destroy as many ballots as there are in excess of the number of names on the poll-list." You will, therefore, instruct the managers of election throughout your county at once that they *must not allow the supervisors to see or inspect any ballots drawn from the box in excess of the number of names on the poll-list*, in order to ascertain for whom such ballots were cast. The ballots must be drawn *without being seen*, and must be *immediately destroyed*, as the law directs.

By order of the committee.

JOHN BRATTON,
Chairman.

The positive language in which the chairman of the Democratic party of each county is commanded by the chairman of the State committee to *instruct* the managers of election in their respective counties shows how completely the managers of election were under the control of the Democratic executive committee of the State. If the partisans of Mr.

O'Connor desired a fair election, why this anxiety on the part of the managers of his party to obliterate the evidences of their fraud and seek to make it impossible to discover the effect of the same?

Wherever the ballots in the boxes, upon being counted at the close of the election, were found to exceed the names on the poll-lists, all the ballots were returned to the boxes and the managers drew therefrom and destroyed a number of tickets equivalent to the excess, in order to make the number of votes correspond with the number of voters on the poll-lists as kept by the clerk. Owing to the great difference in the texture of the Democratic and Republican ballots, the person drawing out the excess could easily distinguish the difference between the two. The table which here follows, and which is abundantly supported by the evidence, is the best proof of this fact:

| | Republican bal. lots drawn out. | Democratic bal. lots drawn out. | Page of record. |
|------------------------------|------------------------------------|------------------------------------|-----------------|
| CHARLESTON COUNTY. | | | |
| Court-House | 125 | ..... | 26 |
| Market Hall | 61 | ..... | 33 |
| Eagle E. H. | 550 | 19 | 65 |
| Marion E. H. | 500 | 157 | 76 |
| Niagara E. H. | 79 | 16 | 87 |
| Enterprise | 101 | 28 | 101 |
| Twenty-two-Mile House.. | 5 | ..... | 111 |
| Muster House | 20 | 1 | 130 |
| Biggin Church | 12 | 1 | 175 |
| Saint Stephen's | 63 | 6 | 101 |
| Blackville | 6 | 1 | 105 |
| Camp Ground | 19 | ..... | 207 |
| Cross-Roads | 7 | 3 | 208 |
| ORANGEBURG COUNTY. | | | |
| Orangeburg Court-House | 63 | 9 | 250 |
| Branchville | 12 | 1 | 213 |
| Brown s | 18 | ..... | 236 |
| Cedar Grove | 22 | ..... | 239 |
| Connor s | 31 | ..... | 239 |
| Fort Motte | 9 | 1 | 239 |
| Ayer s | 23 | 6 | 250 |
| Lewisville | 40 | 13 | 267 |
| Easterlin's | 100 | 7 | 217 |
| Rowesville | 24 | 2 | 244 |
| Jamison's | 61 | 10 | 225 |
| Bookhardt | 16 | 1 | 276 |
| CLARENCE COUNTY | | | |
| Fulton | 106 | 41 | 257 |
| Witherspoon | 47 | 29 | 255 |
| Jordan | 247 | 11 | 255 |
| Packsville | 66 | 12 | 257 |
| Total | 2,454 | 382 | ..... |

At seven of the above-named polls it will be perceived that not a single Democratic ticket was drawn out, and at six others only one Democratic ticket at each. It is true that at three polls in Charleston County not included in the above list, to wit, the City Hall, Washington Engine-house, and Ben Potter's, more Democratic than Republican tickets were drawn out, and that at several other polls the number of Republican tickets drawn out did not greatly exceed the number of Democratic tickets drawn out, but this arose from the fact that at such polls more Democratic ballots had been stuffed into the boxes than were necessary

omplish the purpose intended, and consequently the excess was equal to, and in two instances even greater than, the number of Republican tickets in those boxes, as at the Washington Engine-house, there were only 245 Republican tickets in the box, while the excess was 379, and at Ben Potter's, where there were only 45 Republican tickets in the box, while the excess was 59.

try Republican vote drawn out was a loss of one to Mr. Mackey, gain of one to Mr. O'Connor. On the other hand, by the drawing of a Democratic ticket Mr. O'Connor suffered no loss, because the being created by placing Democratic tickets in the box, whenever a Democratic ticket lawfully voted was drawn out one of the Democratic tickets illegally voted was counted in its place, so that the contestee's was not reduced thereby.

THE TRUE STATE OF THE POLL.

order, therefore, to ascertain the true state of a poll it is only nec-

to add to the vote returned for the contestant at that poll the number of Republican ballots drawn out and destroyed, and to deduct the vote returned for the contestee a like number, making, of course, such additional corrections as the testimony warrants.

ing upon this rule, the committee find that the correct vote at all the polls where the ballot-boxes were stuffed, and Republican tickets drawn out and Democratic tickets counted in their place, is as follows:

| | Vote returned. | | Vote corrected. | |
|---------------------------|----------------|--------------|-----------------|--------------|
| | O'Connor. | Mackey. | O'Connor. | Mackey. |
| CHARLESTON COUNTY. | | | | |
| l. ward 1 | 1,354 | 375 | 1,277 | 452 |
| use, ward 2 | 279 | 347 | 154 | 472 |
| Hall, ward 3 | 1,018 | 476 | 985 | 509 |
| E. H., ward 3 | 670 | 465 | 558 | 526 |
| H., ward 4 | 1,200 | 5 | 608 | 597 |
| H., ward 5 | 1,063 | 364 | 513 | 914 |
| ton E. H., ward 6 | 391 | 66 | 212 | 245 |
| E. H., ward 6 | 835 | 299 | 335 | 799 |
| E. H., ward 7 | 720 | 198 | 601 | 317 |
| E. H., ward 8 | 348 | 196 | 269 | 275 |
| se | 161 | 385 | 60 | 486 |
| two-mile house | 145 | 443 | 129 | 459 |
| House | 71 | 630 | 41 | 660 |
| hurch | 63 | 380 | 50 | 393 |
| ..... | 150 | 64 | 133 | 81 |
| phen's | 232 | 286 | 169 | 349 |
| le | 139 | 97 | 138 | 103 |
| er's | 129 | 34 | 118 | 45 |
| on's | 99 | 85 | 91 | 93 |
| | 9,067 | 5,195 | 6,434 | 7,775 |
| ORANGEBURG COUNTY. | | | | |
| urg Court-House | 419 | 651 | 356 | 714 |
| ille | 245 | 150 | 216 | 163 |
| ville | 96 | 60 | 78 | 78 |
| rove | 296 | 190 | 232 | 240 |
| itte | 199 | 105 | 177 | 127 |
| le | 116 | 83 | 85 | 124 |
| itte | 85 | 279 | 76 | 288 |
| le | 241 | 147 | 194 | 170 |
| le | 236 | 700 | 196 | 740 |
| le | 337 | 112 | 237 | 222 |
| lle | 111 | 127 | 87 | 151 |
| le | 154 | 252 | 93 | 313 |
| mp | 283 | 98 | 193 | 188 |
| ton Seminary | 199 | 91 | 147 | 143 |
| dt | 285 | 178 | 238 | 225 |
| | 69 | 212 | 53 | 228 |
| | 3,371 | 3,435 | 2,658 | 4,114 |

| | Vote returned. | | Vote corrected. | |
|--------------------------|----------------|---------------|-----------------|----------------|
| | O'Connor. | Mackey. | O'Connor. | Mackey. |
| CLARENDON COUNTY. | | | | |
| Fulton..... | 161 | 198 | 55 | 239 |
| Witherspoon's..... | 295 | 180 | 248 | 227 |
| Jordan..... | 433 | 215 | 186 | 462 |
| Manning..... | 459 | 174 | 220 | 413 |
| Packsville..... | 240 | 137 | 135 | 222 |
| Calhoun | 409 | 404 | 171 | 532 |
| <i>Recapitulation.</i> | 1, 997 | 1, 308 | 1, 015 | 2, 155 |
| Charleston County..... | 9, 067 | 5, 195 | 6, 434 | 7, 735 |
| Orangeburg County..... | 3, 371 | 3, 435 | 2, 658 | 4, 114 |
| Clarendon County..... | 1, 997 | 1, 308 | 1, 015 | 2, 155 |
| | 14, 435 | 9, 983 | 10, 107 | 14, 004 |

MACKEY'S REAL MAJORITY.

Correcting, in accordance with the above tabulated statement, the aggregate vote of the district as it appears upon the face of the returns made by the managers of the election :

| | O'Connor. | Mackey. |
|---|----------------|----------------|
| Aggregate vote returned by the managers of the election..... | 17, 458 | 18, 337 |
| Deduct vote returned from those polls where the ballots in the boxes exceeded the names on the poll-list..... | 14, 435 | 9, 983 |
| Add the vote of those polls as corrected..... | 3, 023 | 8, 404 |
| | 10, 107 | 14, 004 |
| | 13, 130 | 22, 408 |
| Majority for Mackey..... | | 13, 130 |
| | | 9, 278 |

The committee ther fore recommend the adoption of the following resolutions :

Resolved, That the Hon. Samuel Dibble is not entitled to hold the seat now occupied by him in this Houseas a Representative from the second district of South Carolina in the Forty-seventh Congress.

Resolved, That the Hon. E. W. M. Mackey was duly elected as a Representative from the second Congressional district of South Carolina in the Forty-seventh Congress, and is entitled to a seat in this House.

APRIL 12, 1882.—Mr. MOULTON, from the Committee on Elections, submitted the following

VIEWS OF THE MINORITY:***Election contest in second district of South Carolina.***

The undersigned members of the Committee on Elections dissent from the views expressed by the majority of the committee, both in regard to the relation of Samuel Dibble, the sitting member, to the case

of E. W. M. Mackey *vs.* M. P. O'Connor, and also in regard to the authenticity and genuineness of the depositions in the said case.

In view of the fact that the circumstances present several novel features, it seems to us that great care should be exercised in its consideration, to the end that every determination made therein should become a sound precedent for future adjudications.

The following are a few of the leading facts in the case:

In November, 1880, E. W. M. Mackey and M. P. O'Connor were opposing candidates for Congress in the second Congressional district of South Carolina, and as the result of the election then held M. P. O'Connor was declared elected by the State board of canvassers, and received the usual certificate of such election, which was duly filed with the Clerk of the House of Representatives. Mr. Mackey contested the election of Mr. O'Connor in the usual form, and in the taking of testimony in such contest, by an agreement of which both parties availed themselves, all limitations as to time were expressly waived, so that the taking of the testimony was protracted over a much longer period than the term allowed by the statute, and before the taking of Mr. O'Connor's testimony was completed he died, on April 26, 1881.

On May 23, 1881, the governor of South Carolina, in accordance with the provisions of the Constitution of the United States, issued his writ of election to fill the vacancy in the representation in Congress; and at the election held thereunder, on June 9, 1881, Samuel Dibble was elected, receiving his credentials June 22, 1881, and the same being filed with the Clerk of the House of Representatives on June 25, 1881.

Mr. Mackey, the contestant of the late Mr. O'Connor, did not serve any notice of contest of Mr. Dibble's election; but proceeded after the death of Mr. O'Connor, and before the election of Mr. Dibble, in taking testimony in the case of Mackey *vs.* O'Connor; and the record as now filed and printed embraces testimony on both sides so taken after Mr. O'Connor's death and before Mr. Dibble's election.

On December 5, 1881, the House met, and Mr. Dibble, on the call of the roll, presented himself to be sworn. Objection was made by a member of the House, who stated to the House the general circumstances of the case, and after calling the attention of the House to the fact that Mr. Mackey had served no notice of contest upon Mr. Dibble, offered the following resolution, viz :

Resolved, That the certificate of election presented by the Hon. Samuel Dibble, together with the memorial and protest and all other papers and testimony taken in the case of the contest of E. W. M. Mackey *vs.* M. P. O'Connor, now on file with the Clerk of this House, be, and the same are hereby, referred to the Committee on Elections, when appointed, with instructions to report at as early a day as practicable whether any vacancy as alleged in the certificate existed, and as to the *prima facie* right or the final right of said claimants to the seat as the committee shall deem proper; and neither claimant shall be sworn until the committee report.

Whereupon the House, after discussion, laid the resolution on the table; and also laid on the table a motion to reconsider its vote thereon.

Mr. Dibble then presented himself at the bar of the House, and was sworn, without further objection, and from that time until December 21, 1881, occupied his seat as a member of the House without challenge or dispute.

I.

Upon grounds which will be hereinafter explained the undersigned conclude that testimony in the contest between Mackey and O'Connor is inadmissible as against Mr. Dibble; that Mr. Dibble is not to be con-

cluded by any allegations, proofs, stipulations, waivers, or laches made or incurred by Mr. O'Connor, or by anybody else, in the case of Mackey vs. O'Connor, or in any other case to which Mr. Dibble was not a party. But if any testimony taken in that case could be lawfully considered in the adjudication of Mr. Dibble's right to the seat which he occupies, we think there are insuperable objections to the record of the case of Mackey vs. O'Connor, as filed with the Clerk of the House of Representatives, and as printed by order of the committee.

Simply stating the fact, which appears on inspection of the dates of depositions and other papers, that at the time of the death of Mr. O'Connor the testimony in his behalf had not been completed, and submitting that as a matter of law the contestant, E. W. M. Mackey, could not, by any process known to the statute, during the period after Mr. O'Connor's death and before Mr. Dibble's election, complete the testimony in a cause in such unfinished condition, by an agreement with any person or persons whomsoever, we come to the still more serious objections applicable to the record.

The sitting member, Mr. Dibble, without waiving his protest to the whole proceeding previously made, submitted to the committee certain affidavits affecting the integrity of the testimony as a whole, and requested of the committee an investigation of the matter, alleging that there were other witnesses who were cognizant of the facts alleged, whose testimony he could not obtain without the order of the House, as they were persons who were politically friendly to Mr. Mackey, the contestant, and were unwilling to give evidence of what they knew. Mr. Dibble also requested leave of the subcommittee to whom the case of Mackey vs. O'Connor was referred to permit him to occupy twenty or thirty minutes of their time in exhibiting to them certain erasures and interlineations of the testimony apparent on the face of the manuscript, which he claimed would of themselves furnish intrinsic evidence that material changes had been made in the testimony, and in some instances in the handwriting of the contestant Mr. Mackey himself. But the majority of the subcommittee declined to permit Mr. Dibble to exhibit any of the said alterations of testimony, and refused to inspect the same.

In connection with this subject let us consider a few facts which are not matter of dispute, but are admitted by the contestant.

By virtue of an agreement between Mr. Mackey, the contestant, and Mr. Chisolm, who was Mr. O'Connor's attorney, a large portion of the testimony was first taken in short-hand by a stenographer, Mr. Hogarth, who was, so far as the testimony for Mr. Mackey was concerned, also employed by him as his notary public. This testimony was transcribed by Mr. Hogarth in his own handwriting from his stenographic notes, and delivered to Mr. Mackey, the contestant. Mr. Mackey employed C. Smith and G. M. Magrath to rewrite the testimony from the sheets furnished him by the notary, and also rewrote a large part of the testimony with his own hand. Certain depositions, after being so rewritten, Mr. Mackey submitted to the witnesses for such corrections as they saw fit to make in their testimony, and in several instances witnesses did make such alterations. In one instance, a witness, after reading the deposition so rewritten, refused to sign it, on the ground that it was not as he had sworn; but the contestant, Mr. Mackey, and himself disagreed as to the matter, and the deposition, as rewritten by C. Smith, was forwarded without the witness's signature, in the shape which the witness had repudiated. None of the testimony so rewritten was compared at the time with the stenographic notes of the stenographer, who certified the

rewritten depositions without such comparison, omitting from his certificates, however, the allegation that the depositions were written out in his presence; and the contestant admitting that the depositions so certified were not written out in the presence of the officer, as the statute requires, with the exception of three or four depositions.

The foregoing are facts about which there is no dispute whatever. The contestant not only does not deny but attempts to justify them.

But the affidavits of E. H. Hogarth, the notary public, and of C. Smith, who was one of the copyists employed by Mr. Mackey, and who, as the printed record shows, was the first witness examined by Mr. Mackey in his contest, and was one of the Republican supervisors at the election of November, 1880, exhibits a still more startling and remarkable career through which the testimony on file has passed in getting to the Clerk of the House.

We annex their affidavits, together with others corroborative of the same, entire:

Affidavit of E. H. Hogarth.

STATE OF GEORGIA,
Richmond County :

Personally appeared before me, a notary public in and for the county of Richmond, E. H. Hogarth, who, being sworn, says that he was a resident of the city of Charleston, State of South Carolina, during the year 1881 up to the 30th of September. That deponent held the office of notary public during said time, and was a stenographer by profession. That he was employed by E. W. M. Mackey, esq., as stenographer and notary public in the contest between E. W. M. Mackey and M. P. O'Connor for a seat in the Forty-seventh Congress of the United States, and that deponent acted as stenographer, and sometimes notary public, in Orangeburg County, on behalf of the Hon. M. P. O'Connor. That deponent took the testimony on the part of E. W. M. Mackey, esq., in the counties of Charleston, Orangeburg, and Clarendon, with the exception of one or two depositions. That all of the testimony so taken by deponent as stenographer was transcribed from his stenographic notes in deponent's own handwriting, and testimony taken on behalf of E. W. M. Mackey, esq., was turned over to him, in deponent's own handwriting, and such taken on behalf of the Hon. M. P. O'Connor was turned over, in deponent's own handwriting, to Robert Chisolm, jr., esq. This ended his (deponent's) connection with said testimony, except that afterward, at various times, he (deponent) signed certificates which were tendered to deponent by E. W. M. Mackey, esq., and also jurats at the foot of dispositions; these deponent signed without comparison with his said stenographic notes, taking it for granted that said testimony was the same as furnished by deponent to said E. W. M. Mackey, esq. That the said certificates were often presented to deponent for signature by said E. W. M. Mackey, esq., when deponent was otherwise employed, and that deponent did not have his stenographic notes at hand when he so certified said testimony.

That deponent also certified the testimony take on behalf of Hon. M. P. O'Connor in instances where deponent acted as notary public.

That deponent did not forward any of said testimony to the Clerk of the House of Representatives, but turned same over to the respective parties named above, and deponent knows nothing of his personal knowledge concerning the forwarding of the same.

E. H. HOGARTH.

Sworn to and subscribed before me this 17th day of February, 1882.

[SEAL.]

WM. K. MILLER,

Notary Public, Richmond County, Georgia.

Affidavit of C. Smith.

STATE OF SOUTH CAROLINA,
Charleston County :

Before me personally came C. Smith, in response to a summons to testify as to certain matters in a contest entitled E. W. M. Mackey vs. M. P. O'Connor, and who, being duly sworn, says I was employed by E. W. M. Mackey to write out the testimony taken in his behalf in the contest between himself and Mr. O'Connor for a seat in the Forty-seventh Congress; this writing was done at the house of Colonel Mackey, and

at the United States court-house, and at my room. The body of testimony was in the handwriting of E. H. Hogarth, stenographer and notary public, and there were interlineations, erasures, and portions of the original sheets were cut out and other sheets substituted, and sometimes left out entirely; that sometimes nearly a whole page was struck out by drawing a line across it; that the interlineations were in the handwriting of E. W. M. Mackey; that the copying made by me omitted the erasures and inserted the interlineations; that sometimes whole pages of this testimony in the handwriting of Colonel E. W. M. Mackey would be inserted, and of which there was no original in the handwriting of Mr. Hogarth, the notary public, that I saw; that sometimes when I returned the originals and my copy of the same, Colonel Mackey destroyed the originals by placing them in a stove, or destroying them by tearing them up; that in some instances the copy made by me was returned interlined, and I made fresh copy with such corrections; the interlineations last mentioned were also in the handwriting of Colonel E. W. M. Mackey; that the notary public, Mr. Hogarth, placed his seal and signature to the testimony as it was handed to him, without making any comparison with the originals, as in many instances as before stated, the originals had been destroyed, and also without making any comparison with his short-hand notes; that is, in every case in which I was present my impression is that I saw him sign nearly all of the testimony, certainly more than half of it; that in the case of W. A. Zimmerman the testimony as copied by this deponent was submitted to him for his signature that he declined to sign the same unless certain corrections were made in it; that the testimony as submitted was not correct, and that unless the corrections were made he would not sign the same; that this testimony of Zimmerman's I returned to Mr. Mackey and I never recopied it, and it was not signed by Mr. Zimmerman when I returned it to Mr. Mackey; that in the case of Maj. T. A. Huguenin the testimony as copied by me was handed to him; he glanced over it and said, "I suppose it is all right," and signed it; that I may have submitted other testimony but cannot now recall the cases where I submitted them for signatures; that Mr. Hogarth in certifying these papers would certify a number of them at one time and without comparison as aforesaid; that I took a number of packages of the testimony to the express office and shipped them, in the name of Mr. Hogarth, to the Clerk of the House of Representatives; that the statements herein apply only to the testimony taken in Mr. Mackey's behalf; I know nothing about the testimony taken for Mr. O'Connor; that from the early part of January, 1881, and off and on during the summer months, and nearly up to the time that the last package of Mr. Mackey's testimony was sent off, I was copying; that the packages hereinbefore mentioned as shipped by me were given to me by E. W. M. Mackey, and I handed to him the receipts for the same, the said receipts being in the name of E. H. Hogarth.

C. SMITH.

Sworn to before me this 16th day of February, 1882.

[SEAL.]

H. L. P. BOLGER,
Notary Public.

Affidavit of W. A. Zimmerman.

THE STATE OF SOUTH CAROLINA,
Charleston County:

Before me personally appeared W. A. Zimmerman, who, being first duly sworn, deposes and says that on or about the 1st day of February, A. D. 1881, he was examined as a witness on behalf of E. W. M. Mackey, esq., contestant in the contested election case of E. W. M. Mackey against M. P. O'Connor for a seat in the Forty-seventh Congress of the United States; that deponent's testimony was taken down in short-hand by E. H. Hogarth, a stenographer employed by the said E. W. M. Mackey; that some time afterwards what purported to be his testimony was brought to him by one C. Smith, written out in long-hand, to be signed by deponent; that deponent read over the paper so brought to him, carefully, and found that it did not contain the testimony as he had given it, but that the same had been altered in material particulars, so much so that deponent refused to sign it, giving as a reason that it was not a correct rendering of this deponent's testimony; that this deponent refused to sign unless these alterations were corrected and the testimony restored to the shape in which it had been given; that the said C. Smith thereupon took back the said paper, and that neither it nor any other testimony was ever presented to deponent for his signature afterwards, nor has he ever been asked again to sign his testimony in the case, nor has he signed it.

W. A. ZIMMERMAN.

Sworn to before me this 17th day of February, 1882.

[SEAL.]

H. L. P. BOLGER,
Notary Public.

Affidavit of W. E. Earle.

DISTRICT OF COLUMBIA,
City of Washington:

Before me personally came William E. Earle, of this city, who, being duly sworn, deposes and says that he has known E. H. Hogarth, a stenographer, formerly of Charleston, and at present residing in Augusta, Ga., for many years; that he is very familiar with the handwriting of said Hogarth, who has done much reporting for deponent and written a great deal in his presence; that deponent has examined the contestant's testimony in the case of E. W. M. Mackey against M. P. O'Connor for a seat in the Forty-seventh Congress, page by page, and that none of the body of the said testimony is in the handwriting of the said Hogarth; that deponent is also familiar with the handwriting of C. Smith, of Charleston, S. C., has seen him write, and said Smith has done copying for deponent; that a great deal, by far the greater part, of contestant's testimony in the case above stated is in the handwriting of said Smith; that in said testimony there is a deposition, unsigned, of one W. A. Zimmerman, which deponent believes to be in the handwriting of said C. Smith; that this motion is made at the earliest day possible, and that all possible diligence has been exercised to present it at the earliest practical moment; that an examination of the manuscript testimony when returned from the printer aroused suspicions as to its regularity, and this was immediately followed up by a careful and scrutinizing examination of it, and by inquiries which had to be made by mail, and the material information was not received until Monday night the 13th instant, and the foregoing affidavits only came to deponent's hand this day.

WM. E. EARLE.

Sworn and subscribed to before me this 20th day of February, A. D. 1882.

[SEAL.]

JOHN E. BEALL,
Notary Public.

We also submit the affidavits filed by Mr. Dibble as to matters apparent on the face of the manuscript testimony, submitted by him after the subcommittee had declined to permit him to exhibit to them the manuscript for their inspection.

Affidavit of Mr. Dibble.

In the Committee on Elections, House of Representatives—Mackey vs. O'Connor.

DISTRICT OF COLUMBIA, ss:

Before me personally came Samuel Dibble, who, being duly sworn, made oath that he has examined a large number of the written pages from which was printed the testimony in the case of Mackey *versus* O'Connor; and that the following matters appeared to him on inspection thereof; and that he places these matters in the form of an affidavit, under the ruling of the subcommittee of the Committee on Elections made to-day, in order that they may have before them some of the facts which deponent desired to present to their attention and inspection to-day, when deponent was before them, and the said written pages were accessible and on the table.

First, as to the testimony filed in behalf of the contestant, E. W. M. Mackey: Concerning this the questions propounded to witnesses, and their answers, are not in the handwriting of E. H. Hogarth. Some of the depositions are in the handwriting of E. W. M. Mackey himself; the greater number of the others are in the handwriting which deponent is informed and believes to be the handwriting of one C. Smith. Deponent is acquainted with the handwriting of the said E. H. Hogarth and of the said E. W. M. Mackey, but only knows the handwriting of C. Smith from information.

In the said testimony filed in behalf of the contestant, E. W. M. Mackey, there are erasures, changes, and interlineations, a few of them in the testimony of witnesses, but those deemed more important by this deponent are in the papers which purport to be returns of United States supervisors of election. The following instances are called to notice:

In the deposition of James Just, in his cross-examination, on page 186 of the manuscript record, it was written as follows:

"Q. Were they colored men?—A. I know one or two were not, because I saw them vote the Democratic ticket.

"Q. Did you see the other two vote the Republican ticket?" These words, by erasure and interlineation, are changed, in the handwriting said to be C. Smith's, so as to read as follows:

"Q. Were they colored men?—A. Yes, sir.

"Q. Did you see them vote the Republican ticket?" the effect of the change being to relieve the witness from a contradictory statement.

On page 391 of the manuscript testimony the figures "417" and "393," respectively, have been inserted in place of erasures; and on page 561, the figures "225" stand in place of "238," erased.

But of the papers purporting to be United States supervisors' returns, made by United States supervisors to the chief supervisor, and consisting of printed blanks filled out with writing and figures, those for Calhoun and Packsville precincts, in Clarendon County, and that for Hope Engine House, in Charleston County, and those for Branchville and Rowesville, in Orangeburg County, are in the handwriting of E. W. M. Mackey, excepting the signatures; also the names of the Congressional candidates in the return for Fort Motte precinct, in Orangeburg County, the rest of the said return being in some other handwriting. And that the said precincts are most of them at great distances apart, that is, those in the county of Clarendon at a great distance from those in the counties of Orangeburg and Charleston, and to go from one to the other would require a long and tedious journey.

On pages 30 and 31, and on pages 2001 and 2002 of the manuscript testimony (found on pages 9 and 10, and on pages 759 and 760 of the printed testimony), appear two certificates of the United States chief supervisor for South Carolina, certifying "tabular statements of the vote at each voting precinct in the second Congressional district" to be "correctly transcribed from the returns made to me by the United States supervisors of election at each poll, of the vote counted and returned at their respective polls by the managers of election thereat." In each of the tabulated statements the return of the Calhoun precinct, Clarendon County, is as follows:

| | E. W. M. Mackey. | M. P. O'Connor. |
|--------------|------------------|-----------------|
| Calhoun..... | 404 | 409 |

Now, an inspection of the manuscript testimony, pages 786 and 787, will show the following in the handwriting of E. W. M. Mackey:

"Q. Did you make a report to the chief supervisor?—A. Yes, sir.

"Q. Is this your report (handing witness a paper)?—A. Yes, sir.

"The report was here introduced in evidence, and is as follows."

Here follows what purports to be the United States supervisor's return for Calhoun precinct, and all the written part of the same, excepting the signature, is in the handwriting of E. W. M. Mackey, and contains the Congressional vote, as counted by the managers, as follows:

"The whole number of votes counted by the managers of elections for member of Congress was —;

"Of which 404 votes were counted for Edmund W. M. Mackey;

"Of which 639 votes were counted for M. P. O'Connor;" the figures "639" being entirely different from the figures "409" certified by the chief supervisor to be the figures of M. P. O'Connor's vote as set forth in the genuine return.

In addition to this, in various places, in papers introduced as United States supervisors' returns, figures have been altered in places material to the case presented by E. W. M. Mackey, and have been printed as altered. Instances are as follows:

| | Manuscript page. | Printed page. |
|--------------------|---------------------|------------------|
| Jordan's..... | 822 | 330 |
| Branchville..... | 484 | 219 |
| Brown's..... | 540 | 235 |
| Corbettsville..... | 578 | 248 |
| Fort Motte..... | 674 | 280 |

Deponent has not time to specify the character of this and other changes, as he has to file this affidavit to-day.

Secondly, as to the testimony filed in behalf of M. P. O'Connor, deceased:

In this testimony, running in manuscript from pages 880 to 1969, inclusive, the interlineations and erasures are by the hundreds. Some appear to deponent to be grammatical corrections, some rhetorical, and some material. Deponent has time to instance but one, found on manuscript pages 905 and 906. The manuscript originally was as follows:

"Q. Was not the number of Republican tickets seventy-eight? When you first opened the box and counted the ballots in order to ascertain the whole number, did you not put the whole number of Republican and the whole number of Democratic tickets in separate piles?—A. No, sir, because we had such a large white vote."

All this is erased except the first part of the question, and an answer to that part is inserted in the handwriting of E. W. M. Mackey, so as to read as follows:

"Q. Was not the number of Republican tickets seventy-eight?—A. I think it was."

Deponent would like to name other instances, but want of time forbids, and the

testimony is in the hands of the committee for any further inspection they may desire.

Deponent is now expecting other affidavits, of the sending of which he has received telegraphic advice since the subcommittee adjourned this morning, and there are other witnesses who, as he is informed and believes from communications received by him, would corroborate the affidavit of C. Smith, but are unwilling to testify; and deponent is satisfied that he cannot secure their testimony except under some order of the House of Representatives in the premises.

SAMUEL DIBBLE.

Subscribed and sworn to before me this first day of March, A. D. 1882.

THOMAS W. SORAN,
Notary Public.

By the affidavits of Mr. O'Connor's counsel it appears, and the fact is not controverted, that all these transactions of Mr. Mackey and his assistants in the transcription and alteration of the testimony were done without their knowledge.

The subcommittee, by resolution of March 1, 1882, limited the sitting member to that day for offering affidavits concerning the alteration of the depositions. On the morning of March 2 an affidavit, of date of February 28, 1882, was received by the sitting member, and forthwith served on the contestant and filed with the clerk of the committee. It was corroborative of the affidavit of C. Smith, and the affiant made oath "that he had seen Mr. Mackey scratch out the testimony and Mr. C. Smith write it over; that he has seen Mr. C. Smith hand to Mr. Mackey written sheets, which deponent believes was the original testimony, and Mr. Mackey tear them up and place the pieces in a stove," and also named three persons whom he swore he had seen reading the original sheets for C. Smith to copy from their reading. The sitting member tendered this affidavit, with the statement that the three persons named were political friends of the contestant, and that he hoped that the subcommittee would obtain their testimony, even if tendered *ex parte* by the contestant; but the majority of the subcommittee, after consideration, determined to exclude this affidavit, as being filed too late.

Mr. Mackey's explanation is as follows:

Personally appeared E. W. M. Mackey, who, being duly sworn, says that for the purpose of taking testimony in his contest against Mr. M. P. O'Connor for a seat in the Forty-seventh Congress deponent employed one E. H. Hogarth, a notary public and a stenographer; that at the time deponent began the taking of his testimony, and for several months after, it was generally believed that there would be an extra session of Congress soon after the inauguration of President Garfield; that deponent was therefore exceedingly solicitous in such event that the testimony in his case should be ready to be submitted to the House of Representatives immediately upon its assembling; that in the taking of testimony in his contest in the previous Congress, deponent had employed the said E. H. Hogarth, whom, in transcribing of his stenographic notes, deponent discovered to be an exceedingly slow writer, especially when required to write in a clear and legible hand; that, therefore, for the purpose of facilitating the said E. H. Hogarth in the transcribing of his stenographic notes of the depositions taken in the present contest, it was agreed by and between deponent and the said E. H. Hogarth that the latter should transcribe his notes in a rough and hasty hand, and that the same should be afterwards copied by others to be employed for that purpose; that except in some instances, not exceeding nine or ten, where the said E. H. Hogarth read his notes and the writing was done either by C. Smith, G. M. Magrath, or deponent, the said E. H. Hogarth, in accordance with the understanding aforesaid, transcribed his notes in a very rough and hasty handwriting and the pages so written were then copied by C. Smith and G. M. Magrath in a neat and legible handwriting.

This explanation is not satisfactory. If the "rough and hasty" copies made by Hogarth were legible, it would certainly have been more expeditious for Hogarth to have certified and forwarded them, than for the contestant to have had them all rewritten by himself, C. Smith, and Magrath. So that the pretext of being in a hurry is not supported by

taking twice the time and trouble and expense necessary, for the simple purpose of reproducing testimony exactly as it was already written.

Besides, the contestant, Mr. Mackey, has, by his own act, indicated that he was not in a hurry in getting in his testimony. At the time he began taking his testimony he entered into an agreement with the attorney of Mr. O'Connor, whereby, "for the convenience of both parties," it was agreed to take testimony for a longer period than was allowed by the statute, as appears by one of the stipulations of the agreement, as follows:

Second. That for the convenience of both parties, and the better to enable them to take such testimony as may by them be deemed necessary, all limitations as to time are hereby expressly waived, and testimony shall be taken at such times as may be agreed upon by the parties to said contest.

And the testimony of Mr. Mackey was none of it forwarded to the Clerk of the House until May, 1881, and a portion of it as late as September, 1881.

It will be noticed that in no instance does the notary public, Hogarth, certify that the depositions filed with the Clerk of the House were reduced to writing in his presence, and in addition he distinctly makes oath that he did not forward the same.

The objection was duly made that the notary public had not certified that the testimony was reduced to writing in his presence, and that it was not forwarded by the officer taking the same.

The following, then, are established facts :

The depositions of the contestant, with one or two exceptions, were taken before E. H. Hogarth, who was a stenographer as well as a notary public. All of the testimony taken before this notary, except three or four depositions, was transcribed from the stenographic notes in his own handwriting and delivered to the contestant. These depositions so taken before and written out by the notary were never forwarded to the House. They are not now and never have been on file either in this committee or in the House. Some of these depositions were burned and some of them were torn up by the contestant. The rest were retained or otherwise disposed of by him. In place of these depositions the contestant sent to the House certain papers written by himself and his agents, which papers are now in the custody of this committee, and have been printed as the contestant's depositions in this case. The method adopted by the contestant in the preparation of these papers was this : He took the depositions in the handwriting of Mr. Hogarth and remodeled them by interlineations, by erasures, by cutting out portions of the original sheets, and either omitting such portions altogether or substituting other sheets in their stead, by erasing sometimes nearly a whole page at once, by inserting entire pages in the handwriting of the contestant, of which there was no original in the depositions written by Mr. Hogarth. The interlineations were in the handwriting of the contestant.

The contestant delivered the most of the depositions so remodeled to C. Smith, who wrote them over, including all interlineations and insertions, and excluding all erasures. Some of the depositions so replaced were burned, and others torn up by the contestant. In some cases, after Mr. Smith had reproduced the paper in the form required by the contestant's erasures, insertions, and interlineations, the contestant corrected the remodeled paper by fresh interlineations in the contestant's hand, and it was then rewritten in full by Mr. Smith to meet the final requirements of the contestant. None of the papers were written in the presence of the notary public.

After these papers were so prepared they were never examined by the notary or compared either with his stenographic notes or with his manuscript before he signed the certificates. The certificates were presented to him ready for signature by Mr. Smith. They were in the following form:

STATE OF SOUTH CAROLINA,
Charleston County:

I, E. H. Hogarth, a notary public in and for the State of South Carolina, do hereby certify that the foregoing deposition was taken by me on the — day of —, A. D. 1881, pursuant to notice of contestant and in accordance with the provisions of law, the contestant being present in person and the contestee being represented by his attorney.

Given under my hand and official seal this — day of —, A. D. 1881.

[SEAL.]

E. H. HOGARTH,
Notary Public, S. C.

These certificates, although signed in some cases several months after the testimony was concluded, were dated, respectively, as of the days when the depositions for which the certified papers were substituted were taken. Mr. Smith, the employé of the contestant, sent these papers to the Clerk of the House of Representatives, not by mail, but by express, taking a receipt therefor from the express company in the name of Mr. Hogarth, which he delivered to the contestant.

The following are the provisions of the statute:

SEC. 122. The officer shall cause the testimony of the witnesses, together with the questions proposed by the parties or their agents, to be reduced to writing in his presence and in the presence of the parties or their agents, if attending, and to be duly attested by the witnesses respectively.

SEC. 127. All officers taking testimony to be used in a contested-election case, whether by deposition or otherwise, shall, when the taking of the same is completed and without unnecessary delay, certify and carefully seal and immediately forward the same by mail addressed to the Clerk of the House of Representatives of the United States, Washington, D. C.

The corresponding provisions of the judiciary act of 1789 are in the following words:

And every person depositing as aforesaid shall be carefully examined and cautioned and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given after the same shall be reduced to writing, which shall be done only by the magistrate taking the deposition, or by the deponent in his presence. And the depositions so taken shall be retained by such magistrate until he deliver the same with his own hand into the court for which they are taken, or shall, together with a certificate of the reasons as aforesaid of their being taken, and of the notice, if any, given to the adverse party, be by him, the said magistrate, sealed up and directed to such court and remain under his seal until opened in court.

The following provisions are common to the contested-election law and the judiciary act of 1789:

1. The deposition must be reduced to writing in the presence of the officer.

2. It must be transmitted to the tribunal before which it is to be used by the officer himself; and until so transmitted it must remain in the custody of the officer.

It is obvious, therefore, that decisions of the Federal courts on these two provisions of the judiciary act for the writing out and transmittal of the deposition will be authorities in cases which may come before this committee under the two corresponding provisions of the statute relating to contested elections.

In *Bell vs. Morrison* (1 Peters, 351), Judge Story, delivering the opinion of the court, held that, under section 30 of the judiciary act, a depo-

sition is not admissible if it is not shown that it was reduced to writing in presence of the magistrate.

In *United States vs. Smith* (4 Day, 121), the counsel for defendant objected on the trial to a deposition offered by the plaintiff on the ground that it did not appear that it was reduced to writing, either by the magistrate or by the witness in the presence of the magistrate, as required by section 30 of the judiciary act of 1789. The magistrate's certificate was in these words:

Personally appeared the above-named Thaddeus R. Austin, of Suffield, in the State of Connecticut, and, being duly cautioned, made oath to the truth of the above deposition by him subscribed and written in my presence, &c.

Judge Pierrepont Edwards, delivering the decision of the court, said:

The provisions of the act of Congress relative to the taking of depositions are very important, and ought to be adhered to strictly. This deposition cannot be read. The question is not a new one. In England the lord chancellor has refused to admit depositions taken as this was.

In the case of *Edmonston vs. Barrett* (2 Cranch C. C., 228), the plaintiff's attorney offered in evidence on the trial the deposition of John Marshall, of Charleston, S. C., taken before the Hon. John Drayton, district judge of the United States. The certificate of the judge was in the following words:

DISTRICT OF SOUTH CAROLINA, &c.:

On this 28th day of May, 1818, personally appeareth the under-named deponent, John Marshall, of Charleston, merchant, before me the subscriber, John Drayton, district judge of the district aforesaid, and being by me carefully examined, cautioned, and sworn in due form of law to testify the whole truth and nothing but the truth, relating to a certain civil cause, &c., he maketh oath to the deposition above written, and subscribes the same in my presence, the said deposition being first reduced to writing by the deponent.

The attorney for the defendant objected to the deposition on the ground that the judge had not certified that it was reduced to writing in his presence, as required by section 30 of the judiciary act of 1789. The attorney for the plaintiff contended that it was to be presumed to have been so written because the law required it. But the court unanimously sustained the objection and rejected the deposition.

In the case of *Pettibone vs. Derringer* (4 Wash., 215), tried in the circuit court of the United States for the third circuit at Philadelphia, in 1818, before Justice Washington, of the Supreme Court of the United States, and District Judge Peters, objection was made on the trial to the introduction of a deposition on the ground that the officer who took it had not certified that it was reduced to writing by the witness in his presence. The court sustained the objection and held,

That a deposition taken under the thirtieth section of the judiciary act cannot be used unless the judge certifies that it was reduced to writing either by himself or by the witness in his presence.

In the case of *Raynor vs. Haynes* (Hempst., 689), decided by the United States circuit court for the ninth circuit, in 1854, depositions offered by the attorneys for the defendant were objected to on the ground that the magistrate failed to state that the depositions were reduced to writing in his presence, and the objection was sustained by the court.

In the case of *Cook vs. Burnley* (11 Wall., 659), when the defendants' case was reached in the course of the trial, the defendants offered to read a deposition taken under section 30 of the judiciary act. There was no certificate by the magistrate that he reduced the testimony to

writing himself, or that it was done by the witness in his presence. The deposition was excluded by the district court. The Supreme Court of the United States said :

There is no certificate by the magistrate that he reduced the testimony to writing himself, or that it was done in his presence, which omission is fatal to the deposition.

In *Baylis vs. Cochran* (2 Johnson (N. Y.), 416), Chief Justice Kent, delivering the opinion of the court, said :

The manner of executing the commission ought not to be left to *inference*, but should be plainly and explicitly stated. It would be an inconvenient precedent and might lead to great abuse to establish the validity of such a loose and informal system; matters which are essential to the due execution of the commission ought to be made to appear under the signature of the commissioners. Among these essential matters is the examination of the witness on oath by the commissioners, and the reducing of his examination to writing by them, or at their instance and under their care. We are accordingly of opinion that the judgment of the court below ought to be affirmed.

While the particular facts in this New York case differ from the facts of the case now on trial, it is quite unnecessary to suggest the forcible application of the doctrine of that case to this.

The case of *Summers vs. McKim* (12 S. & R., 404) is a very strong authority on the point now under consideration. There was at the time no law in Pennsylvania requiring the deposition to be reduced to writing in the presence of the officer. There was no rule of court to that effect. The only regulation on the subject was a rule of court requiring the deposition to be *taken before a justice*. But Chief-Justice Tilghman, delivering the opinion of the court, said :

The third bill of exception contains two distinct points. The first point is on the admissibility of the deposition of George Leech; several exceptions were made to this evidence, but there was one which was decisive; and as it involves a principle of great importance in practice I am glad that an opportunity is offered to the court of settling it. This deposition was taken under a rule of court before a justice of the peace of Clearfield County, but it was drawn up in the city of Lancaster from the mouth of the witness by Mr. Hopkins, counsel for the defendant, and then sent to Clearfield County and sworn to there.

Now, although the character of the counsel in the present instance puts him above all suspicion of unfair dealing, yet it would be a practice of most dangerous tendency if depositions so taken were to be admitted as evidence. The counsel of the party producing the witness is the last person who should be permitted to draw the deposition, because he will naturally be disposed to favor his client, and it very easy for an artful man to make use of such expressions as may give a turn to the testimony very different from what the witness intended. I know that depositions are sometimes taken in this manner by consent of parties; and when the counsel on both sides are present the danger is not so great; but in the present case there was no consent, nor was the counsel of the plaintiff's present. The rule of court is that the deposition shall be *taken before a justice*; it ought, therefore, to be reduced to writing from the mouth of the witness in the presence of the justice, though it need not be drawn by him; and in case of difference of opinion in taking down the words of the witness the justice should decide. In chancery, if the counsel of one of the parties draws the deposition before the witness goes before the commissioners, it will not be permitted to be read in evidence. (1 How. Ch., 360.) This certainly is a good rule; the taking of testimony by deposition is at best but a very imperfect way of arriving at the truth; every precaution should, therefore, be taken to guard against abuses. It is very clear to me that the mode in which the deposition of George Leech was taken is subject to great abuse, and should be put down at once. I am of opinion, therefore, that it was very properly rejected.

The following is a case where depositions went into the hands of the defendant improperly, and they were excluded by the court. It was not shown they were changed or altered (*Ross vs. Barker*, 5 Watts, 394 Pa.). Chief-Justice Gibson said :

Though the depositions had been put into the office, they had been taken away and brought back again by one of the defendants. What may have happened to them in

this interval of surreptitious custody—probably nothing, but possibly a great deal—cannot certainly be known. It is abundantly clear they were not filed within the meaning of the rule, or in the keeping and custody provided by the law.

If for the facts of the last two cases we substitute the facts of this case, in which the depositions, after having been taken in shorthand by the notary and written out by the notary in the ordinary hand, were not transmitted to the House as the law required, but were delivered unsealed into the custody of the contestant himself and kept in his house, and reproduced, and yet again reproduced by an employé of the contestant until molded at last into forms entirely satisfactory to him, whereupon the manuscript of the notary was retained or actually destroyed and the work of the contestant put in its place, and the notary's certificates thereto attached dated respectively as of the days when the witnesses actually testified, and, therefore, in some cases many months prior to the time when the contestant's home manufacture so certified was, in fact, completed, we shall at once see with how much greater force the doctrine of the supreme court of Pennsylvania applies to this case than to those.

In Railroad Company *vs.* Drew (3 Woods C. Ct., 692), tried in 1879 before the United States circuit court for the fifth circuit, objection was made to certain depositions on the ground that the answers of the witnesses had been written out by counsel in advance. The objection was sustained. Mr. Justice Bradley, announcing the decision of the court, said :

The fact, however, that the answers of the witnesses were prepared in writing by their counsel in advance is fatal to the depositions. The examinations should be made by the examiner, and not by counsel before the witnesses are brought before the examiner to give their testimony. The depositions must be suppressed.

The case of Beale *vs.* Thompson (8 Cranch, 70) bears indirectly and yet with great force on the point now under consideration. On the trial in the circuit court the defendant had offered in evidence a deposition taken before the judge of the district court of the United States for the district of New Hampshire, under the thirtieth section of the judiciary act of 1879. The deposition was sealed up by the judge but directed to the clerk of the court, and he, supposing it to be a letter relating to his official business, opened it out of court. The court below rejected the deposition. Judge Story delivered the opinion of the Supreme Court, as follows :

The single point in this case is whether the circuit court of the District of Columbia erred in rejecting the deposition of Tunis Craven. Independent of all other grounds the court are of opinion that the fact of the depositions not having been opened in court is a fatal objection. The statute of 24th September, 178, ch. 20, sec. 30, is express on this head. The judgment of the circuit court must be affirmed.

The case of Shankriker *vs.* Reading (4 McL., 240) also bears strongly on the question now under consideration. The court said :

On the trial of this case a deposition was offered in evidence, which was taken in New York December 29, 1847. It was mailed at Waterloo, in that State, June the 4th, and received from the post-office here the 7th of June. The county judge certified that the deposition was reduced to writing by the deponent in his presence, but did not state that it was retained by him until it was sealed and directed to the clerk of the circuit court.

It was so directed, but by whom is not stated. The name of the case in which the deposition was taken was indorsed on the envelope. For the want of this certificate the deposition was objected to.

The act of Congress provides that the depositions so taken shall be retained by such magistrate until he deliver the same with his own hand into the court for which they were taken, or shall, together with a certificate of the reasons as aforesaid of their being taken, and of the notice, if any, given to the adverse party, be by him, the said

magistrate, sealed up and directed to such court, and remain under his seal until opened in court.

The deposition objected to may have been handed to the party at whose instance it was taken, who forwarded it by mail to the clerk of the court. The law did not intend that either party should have possession of the deposition until it should be received by the clerk and opened by the general or special order of the court. The deposition is rejected.

Now, while the language of the provision of the Revised Statutes relating to contested elections is not identical on the point of the custody and transmission of the depositions with the language of the corresponding provision of the judiciary act of 1789, still in substance the two statutes are in this particular alike; for the provision of the law relating to contested elections absolutely excludes the possibility of the possession of the depositions, whether sealed or unsealed, by a party before their transmittal to Washington. It also absolutely excludes the possibility of a transmittal of the deposition by a party or his employés. The doctrine of the decisions in these two cases just cited from Cranch and McLean is fatal to these depositions, which were kept unsealed in the house of the contestant and out of the custody of the notary, and were finally destroyed and replaced by documents called depositions prepared in his house, which latter were transmitted not by the notary but by the contestant, some of them at the expiration of a period of several months after the time when the genuine depositions were taken.

In the United States *vs.* Price (2 Wash. C. Ct., 356) a commission to take testimony, which had issued in a case to which the United States was a party, was set aside because it had been opened by the Secretary of War and some other officer of the Government before it came into the hands of the clerk.

In Hunt *vs.* Larpin (21 Iowa, 484) the Supreme Court sustained an objection to certain depositions based upon the ground that they had been written out by the counsel of the party in whose favor they were to be read as testimony. And yet there was no law in force in Iowa at that time forbidding parties or their attorneys to write out the depositions of witnesses, or requiring the depositions to be written in the presence of the officer. The following was the provision of the statute:

SEC. 4079. The person before whom any of the depositions above contemplated are taken must cause the interrogatories propounded (whether written or oral) to be written out and the answers thereto to be immediately inserted underneath the respective questions. The language must be in the language as nearly as practicable of the witness, if either party requires it. The whole being read over by or to the witness, must be by him subscribed and sworn to in the usual manner.

In Williams *vs.* Chadbourne (6 Cal., 559) the defendant objected to a deposition offered by the plaintiff on the ground that the certificate did not show that the deposition had been, as the law required, read to the witness before he signed it. The court sustained the objection and said:

On the second point of objection we are satisfied that the deposition was properly excluded; the certificate was insufficient. It should have set out an actual compliance with the statute.

In Stone *vs.* Stillwell (23 Ark., 444) objection was made to a deposition offered in evidence on the ground that the certificate of the justice of the peace did not state that the deposition was reduced to writing in his presence, as required by section 13, chapter 55, of the digest. The provision of section 13 is this:

Every witness examined in pursuance of this act shall be sworn to testify the whole truth, and his examination shall be reduced to writing in the presence of the person or officer before whom the same shall be taken.

The court said :

The justice states in his certificate "that the examination, responses, and statements of said deponent were reduced to writing in my, and by the said deponent sworn to and subscribed in my presence, at the time and place aforesaid," &c. It is manifest that the want of the word "*presence*" after the word "*my*," where it first occurs in the certificate, was a mere clerical omission of the justice; and taking the whole certificate together it is evident that he meant to certify that the deposition was reduced to writing in his presence.

But it is argued that the original stenographic notes were written out in the presence of the notary public, and that this was a compliance with the statute. The authorities already cited are not consistent with this position. The object is the authentication of the testimony now on file with the Clerk of the House. And the agreement of the parties only extended to the substitution of the long-hand transcript of the stenographic notes, and did not waive anything but the signatures of the witnesses thereto. The parties made no agreement that the depositions in long-hand should be afterwards recopied by the contestant and his agents out of the presence of the notary, and that these papers should be forwarded, and the long-hand depositions made by the notary should be destroyed. The part of the agreement bearing upon this matter is as follows :

Fourth. That inasmuch as both parties intend to have the depositions of many of the witnesses taken in short-hand by a stenographer, which will render it impossible for such witnesses to subscribe to their depositions until the same shall be written out, which, in many instances, cannot be done for some time after such depositions shall have been taken; and inasmuch as the signatures of the witnesses in such cases could only be procured by requiring a second attendance of such witnesses at considerable inconvenience and expense to all parties interested; therefore, in all cases where a deposition is not subscribed to by the party making the same the signature of such witness is hereby waived.

The contestant, Mr. Mackey, states that this rewriting of the depositions was done, not by agreement of the parties, but by agreement between the notary, Hogarth, and himself. But to our minds this conduct of a public officer was a violation of his plain duty under the statute, to retain the testimony in his own custody until forwarded, and this was aggravated, not excused, by collusion between the officer and one of the parties without the knowledge or consent of the other party.

We think, therefore, that the depositions substituted by the contestant and his agents for the originals written by Hogarth should be suppressed.

We do not consider that the papers offered as United States supervisors' returns and the tabulated statement purporting to be made by the chief supervisor are admissible in evidence for the reasons following:

1. The statute, so far as supervisors outside of the city of Charleston are concerned, does not authorize or require such returns to be made by precinct supervisors. The act of Congress (sec. 2029, U. S. Rev. Stat.) prescribes that they—

Shall have no authority to make arrests or to perform other duties than to be in the immediate presence of the officers holding the election and to witness all their proceedings, including the counting of the votes and the making of a return thereof.

It is only necessary to call attention to the opinions of the eminent men of both political parties who construed this section at the time of its passage as a measure of compromise between the Senate and House. Their views were expressed as follows:

In the Senate the provision was explained by Mr. Edmunds, one of the managers on the part of the Senate:

Mr. MORTON. I ask the Senator from Vermont if I understand correctly that this

simply makes the supervisors silent spectators, without even the power to challenge a vote?

Mr. EDMUNDS. No, sir; they have no power to challenge a vote except that which belongs to a citizen under the existing laws. * * * The House insisted upon having this provision put in as a means of composing their differences in the other body, to which we were forced to assent with a view to getting to an end. (91 Cong. Globe, 4495.)

The report of the last conference committee in the House, and the explanations of Mr. Garfield and Mr. Niblack, managers on the part of the House, and of other Representatives, are printed on pages 4453 to 4455 of volume 91 of the Congressional Globe:

Mr. GARFIELD. The effect of this is that the supervisors authorized by this act stand by and witness the proceedings of the election, and have the official right to stand by, so that, if frauds are being perpetrated, the Government of the United States may have as witnesses a member of the Democratic party and one of the Republican party to the facts in the case.

Mr. SHELLABARGER. * * * It seems to me, and I suggest it as an apprehension, that this strips these supervisors or inspectors of the power both of challenge and also of indorsing the certificates of election.

Mr. GARFIELD. That may be true; but even if it be true, the presence of these officers, appointed by a judge, acts as a moral challenge.

Mr. BROOKS. I understand that they have not the power to give certificates of election.

Mr. GARFIELD. I should say clearly not.

Mr. BROOKS. Nor have they any power to make any return.

Mr. GARFIELD. Nothing of the kind.

Mr. NIBLACK. Mr. Speaker, the particular amendment under discussion with regard to supervisors of election has been one of the most stubborn causes of difference between the two Houses that it has ever been my fortune personally to observe in connection with a committee of conference. We have spent, first and last, some twelve or fifteen hours in considering the amendments to this bill. The greater portion of the discussion of any serious character has been directed to this particular amendment. For most of the time I despaired of the committee being able to make a report which would meet the views of the majority of both Houses. From the first I announced the proposition that I could sign no report which recognized in any degree the principle of Federal interference in State elections. * * * The power of these supervisors is reduced to that of mere official witnesses of elections, with no other power than to make complaint before the proper officers of the law, if they think the election laws have been violated. * * * I think by allowing the bill to be voted on we can save not only an extra session, but the continuance of this one beyond nine o'clock this evening.

Mr. KERR. Under the language of that amendment I think it is perfectly clear, as a question of law, that these two supervising witnesses will have neither right nor authority to sign, or to superintend, or in any way to modify or to change the return of the election. They may merely stand by and see how it is conducted.

2. No certificate of an officer is admissible in evidence unless he is required by law to make such certificate, for in such case only is it covered by the sanction of his oath. And matters not of record but of fact, technically called matters *in pais*, cannot be certified by an officer, but in such case the officer must testify as to the matters of fact.

3. The papers purporting to be the original returns of supervisors in this case were produced, according to the record of the case as printed, by the contestant, Mr. Mackey, and not by the chief supervisor, to whom they are alleged to have been made. If they are the original returns, it was a breach of official duty, which cannot be presumed against the chief supervisor, to allow them to pass from his custody into the hands of one of the parties to an election contest. In all cases where such returns are authorized by law it is made the duty of the chief supervisor either to keep them of record, as required by section 2026—

He shall receive, preserve, and file all oaths of office of supervisors of election, and of all special deputy marshals appointed under the provisions of this title, and all certificates, returns, reports, and records of every kind and nature contemplated or made requisite by the provisions hereof, save where otherwise herein specially directed—

or in certain cases to forward the same to the Clerk of the House of Representatives, as required by section 2020:

And prior to the assembling of the Congress for which any such Representative or Delegate was voted for, he shall file with the Clerk of the House of Representatives all the evidence by him taken, all information by him obtained, and all reports to him made.

And section 2031 provides among his fees:

For filing and caring for every return, report, record, document, or other paper required to be filed by him under any of the preceding provisions, &c.

4. The written portions of five of the so-called original returns of supervisors—purporting to be the returns of Calhoun and Packsville precincts, in Clarendon County; of Hope Engine-house, in Charleston County; and of Branchville and Rowesville, in Orangeburg County—are in the handwriting of Mr. Mackey, the contestant, and the Congressional report of Fort Motte precinct, in Orangeburg County, also. And as to one of these—that of Calhoun precinct, in Clarendon County—the figures do not correspond with the tabulated statement for the same precinct, purporting to be the statement of the chief supervisor, made from the returns filed with him; so that one or the other is false. In addition, none of these papers introduced as the original returns so filed by the precinct supervisors bear upon them any indorsement of their having been filed with the chief supervisor, with the exception of three of them (Record, pp. 207-210); and those three are not certified under seal, nor do they appear to have been introduced in evidence pursuant to any notice, or in presence of the notary or any of the opposite party at any taking of testimony in the cause.

5. The papers purporting to be the statements of the chief supervisor are not under seal, do not purport to be copies of records of his office, but simply a compilation of his own of figures taken from sundry papers, nor is there any proof accompanying them that the person making them is the chief supervisor.

THE CONTESTEE'S TESTIMONY.

An inspection of the manuscript testimony on file will show numerous erasures and interlineations, many of them in the handwriting of the contestant, Mr. Mackey. Mr. Charles E. O'Connor's affidavit shows that these changes were made after Mr. Dibble's election; and the contestant, Mr. Mackey, does not claim or pretend that Mr. Dibble had any notice of them.

Mr. Charles E. O'Connor, in his affidavit (p. 7), says:

The work of correcting this testimony was begun in or about the middle of July, 1881, and certainly not earlier than the middle of June of that year, and that it continued from time to time, with frequent interruptions, during the summer months. Deponent further says that this work was done solely upon the suggestion of the contestant, &c.

Mr. Dibble was elected June 9, 1881, and enrolled by the Clerk of the House of Representatives June 25, 1881.

The following is one of the numerous changes made in this part of the testimony. The inspection of the manuscript (folios 905, 906) shows that this was written out originally as follows:

Q. Was not the number of Republican tickets seventy-eight? When you first opened the box and counted the ballots in order to ascertain the whole number, did you not put the whole number of Republican and the whole number of Democratic tickets in separate piles?—A. No, sir; because we had such a large white vote.

It now appears in the manuscript, by means of erasures and interlineations, and is printed as testimony, as follows:

Q. Was not the number of Republican tickets seventy-eight?—A. I think it was.

The substituted answer "I think it was" is interlined in the manuscript in the handwriting of Mr. Mackey, and the answer originally written in the manuscript, together with the portion of the question to which it was responsive, entirely disappears by erasure.

We have, then, in this case the testimony of the contestee in an unfinished condition at the time of his death, and such testimony as had been then taken changed after Mr. Dibble's election, by the contestant, Mr. Mackey, and another not representing Mr. Dibble in any way, and without Mr. Dibble's knowledge or consent; and yet Mr. Dibble is called upon to defend his seat upon the basis of such testimony, upon a notice served upon him six months after his election, and after all these irregularities had been consummated. We cannot concur in such a determination.

II.

But, as we have already said, we think Mr. Dibble's rights are not to be affected in any way by this record in the case of Mackey vs. O'Connor. We have already given an outline of the facts connected with Mr. Dibble's admission to his seat, and have quoted the words of the resolution referring the credentials of Dibble and the record of the case of Mackey vs. O'Connor to the Committee on Elections, which was laid upon the table by the House, and have also shown that the House laid on the table the motion to reconsider the vote on that resolution.

Let us apply to these facts the principles of statute and parliamentary law which appear to us to be applicable thereto. And in this connection let us cite from our own recognized parliamentary compilation as to the effect of the motion to reconsider and lay on the table. Smith's Digest, page 292, concerning the motion "to lay on the table," contains this language:

In the House of Representatives it is usually made for the purpose of giving a proposition or bill its "death-blow"; and when it prevails, the measure is rarely ever taken up again during the session. If the motion to "reconsider and lie" follow this motion, and be carried, it can only be taken from the table by the unanimous consent of the House.

And again (*Ibid.*, p. 293):

If a motion to reconsider be laid on the table, the latter vote cannot be reconsidered. (Journals 3, 27, p. 334; 1, 33, p. 357.)

Mr. Cushing, in his "Law and Practice of Legislative Assemblies," after showing the distinction between the English and American laws on the subject of legislative vacancies, proceeds as follows:

If it [i. e., a vacancy] occurs before the sitting or in a recess, and the new election takes place without the previous authority of the assembly, the existence of a vacancy must be determined upon when the member elected presents himself to take his seat.

In the history of vacancies in Congress, there is one case which in many respects resembles the present. In May, 1867, George D. Blakey and Elijah Hise were opposing candidates for Congress in the third congressional district of Kentucky, and four days after the election Mr. Hise died. Mr. Blakey appeared before the State canvassing board, and claimed to have been elected. The board decided that Mr. Hise had been elected. Congress assembled thereafter on July 3, 1867; and on July 5, 1867, a memorial of Mr. Blakey was presented to the House

asking admission as a member from the said Congressional district, and the memorial and accompanying papers were referred to the Committee on Elections, who were instructed by the House, July 11, 1867, in relation to taking evidence in regard to the same.

On July 20, 1867, Congress adjourned until November 21, 1867. During this interval, and while the Committee on Elections had under consideration the claim of Mr. Blakey to the seat, a special election was held in the third Congressional district of Kentucky, under writs of election issued by the governor of Kentucky, to fill the vacancy occasioned by the death of Mr. Hise; and at such special election, held August 5, 1867, Mr. Golladay was elected, and on November 25, 1867, presented his credentials to the House.

An extended discussion followed. The distinguished chairman of the Committee on Elections, Mr. Dawes, after conceding the ordinary rule to be that charges touching "the legality of an election are matters which pertain to a contest in the ordinary way, and should not prevent a person holding the regular certificate from holding his seat," said:

I do not see how it is possible to apply the rules laid down there to this case, without foreclosing Dr. Blakey from any further investigation of the question of a vacancy existing at that time. (Cong. Globe, 1, 40, p. 783.)

Other members of the House took the position that Mr. Golladay should be seated *prima facie*, and that Mr. Blakey should be allowed to contest with him the right to his seat.

The House adopted the view of Mr. Dawes, and, instead of allowing Mr. Golladay to be sworn, referred his credentials to the Committee on Elections. Eight days afterwards Mr. Dawes presented the unanimous report of the Committee on Elections declaring that Mr. Golladay was entitled to the seat. (Cong. Globe, 2, 40, pp. 3, 56.) This report was adopted by the House, and necessarily recognized that the writs of election issued by the governor of Kentucky for the special election, were valid, even though the House had under consideration the question of the existence of a vacancy at the time. For had the writ of election of the governor of Kentucky been prematurely issued, the election would have been without legal sanction, and therefore invalid. And this decision of the House was not inadvertently rendered, for Mr. Blakey not only mentions in his memorial to the House that he had protested before the State authorities against the holding of the special election, but, in addition, reiterates it in his remarks before the House. But the House refused to recommit the report of the committee, ordered the previous question, by a vote of 102 to 22, and adopted the recommendation of the committee without a division. (Cong. Globe, 2, 40, pp. 57, 61.)

Now, to recapitulate. What principles are involved in this decision? The main doctrine is, that the right and duty of the executive of a State to issue writs of election to fill vacancies in the House, derived from article 1, section 2, of the Constitution of the United States, in advance of any adjudication by Congress on the question of vacancy occasioned by death, is to be exercised in contested cases as well as in ordinary cases, thus applying to such cases the same principles so early settled in the cases of Edwards (Clark & Hall, 92), Hoge (Clark & Hall, 136), and Mercer (Clark & Hall, 44). And while as to the matter of practice in the case of Golladay there was a difference of opinion as to whether the credentials ought to be referred to the Committee on Elections, in order to determine finally as to the existence of a vacancy before seating Mr. Golladay, who held the certificate, or whether Mr. Golladay should be sworn, and the right reserved to Mr. Blakey to contest his

seat, there was no dissent from the proposition of Mr. Dawes, that if Mr. Golladay were sworn in without such reservation, Mr. Blakey would be foreclosed "from any further investigation of the question of a vacancy existing at that time."

Now, in the present case, not only was there no reservation of the right to contest Mr. Dibble's seat when he was sworn in, but the House, by a very decided vote, tabled a motion to refer the credentials of Mr. Dibble and the papers in Mackey *vs.* O'Connor to the Committee on Elections, and tabled a motion to reconsider its vote thereon.

We do not mean to say, nor have we ever understood Mr. Dibble to contend, that it is beyond the power of the House to make inquiry into his right to his seat by such means as it may see fit to adopt in an investigation *de novo*. Such an investigation would give to the sitting member the opportunity, which he has never enjoyed, of defending his seat by pleadings of his own, and such proofs as he may be disposed to offer in his cause. It must be borne in mind that by the action of the House itself Mr. Dibble was placed in full possession and enjoyment of the office of member, on December 5, 1881. This possession was clear from any qualification, reservation, or condition; it was as absolute as the possession of any member on the floor. Can it be said a contest was pending in the case of Mackey *vs.* O'Connor? The answer is that the House had decisively given "its death-blow" to the motion to make Mr. Dibble a party to that contest before he was sworn in.

It is premature to discuss and to pass judgment upon the effect of the election of November, 1880, upon the special election of June, 1881, because it is a mere speculative inquiry, until by some order of the House, which order has never yet been made, the sitting member is placed in the position of a party to a contest, either under the statute or under a special order of the House adopted for the specific case.

If we look at the statute we find the following language:

SEC. 105. Whenever any person intends to contest an election of any member of the House of Representatives of the United States, he shall, within thirty days after the result of such election shall have been determined by the officers or board of canvassers authorized by law to determine the same, give notice, in writing, to the member whose seat he designs to contest, of his intention to contest the same, and in such notice shall specify particularly the grounds upon which he relies in the contest.

Section 106 provides for an answer by the member thus served with notice. Section 107 provides for the taking of testimony, and incidentally, but without doubt, defines the term member to mean "returned member."

Now, there is nothing in the statute to limit its application to general in contradistinction to special elections. "To contest an election of any member" is broad and comprehensive; and in this category Mr. Dibble, as a "returned member," certainly may be embraced. Mr. Dibble was certainly elected at an election regularly held according to law. The cases of Hoge (Clark & Hall, 136), Edwards (Clark & Hall, 92), and Mercer (Clark & Hall, 44), and the case of Blakey *vs.* Golladay settle that. The action of the House in seating Mr. Dibble recognizes the fact, and puts it beyond dispute. It is unnecessary to cite authorities to show that questions concerning the *legality* of an election are proper matters of contest under the statute; they have been so treated in numerous cases.

And when we consider that Mr. O'Connor, the "returned member" of the November election, had a right to a seat only so long as he lived, and had no inheritable or transmissible interest to be affected after his death, it is enough to state that a contest for his seat after his

death is a contest for something that had ceased to exist. The only relation that could exist between himself and any one that succeeded him was a relation of time, not a relation of privity. It cannot be said that because Mr. O'Connor was elected for a term of two years he had a right in himself and his privies for two years whether he lived or died. He only had a right for two years, provided he should live; the very fact of his death creating a vacancy shows that his right was absolutely gone at his death. And for any one else to have or claim a right the original granting power, *i. e.*, the people, had to be invoked, and they alone had the right to bestow the remainder of the term. In law the case of a suit against a life tenant is analogous. Can any one claim that where one of two litigants of a close—the one in possession—dies, and another person enter into possession of the disputed territory under a fresh grant from the sovereign, that the tenant thus entering can be ousted upon the proceedings had against his predecessor, such predecessor being neither his ancestor or grantor, but simply a life tenant? And shall the right of a member of this House to his seat, a right held to be a right of property, be decided on principles antagonistic to those which govern the decisions of other rights of property? We think not.

Recurring to the statute, we think it a reasonable construction of the same, when we come to the conclusion that Mr. Dibble, as the returned member of the House, was entitled to the notice required thereunder, in like manner as a member elected and returned at a general election. One thing is certain, that it was in the power of Mr. Mackey to serve such notice, and to state as his grounds the same reasons he now advances for contesting the election of Mr. Dibble, and if the evidence taken in the previous contest of Mackey *vs.* O'Connor were competent in the new case, he had the opportunity of submitting it on notice, as evidence in a contest against Mr. Dibble thus inaugurated, and we fail to find any statutory means by which Mr. Dibble, after his election, could, by any act of his, become a party to the case of Mackey *vs.* O'Connor.

This being the case, and the House having seated Mr. Dibble, is there any precedent in law or in the decisions of this House in contested cases, whereby the party in possession of his seat should go out to hunt an adversary? Is he to be the actor in any way? We fail to find any such precedent, and can only come to the conclusion that Mr. Mackey, having neglected to avail himself of the opportunity afforded him by the terms of the statute, whereby he could have inaugurated a contest in the usual form, in the first instance either willfully or mistakenly prevented Mr. Dibble from being a party to the issues he is now trying to force upon him.

Failing to find in the statute any mode whereby Mr. Dibble could be made a party to the case of Mackey *vs.* O'Connor, and finding in it a mode whereby Mr. Mackey might have made the issues with Mr. Dibble, on which he now invokes the judgment of the House, but did not so take issue with Mr. Dibble, we cannot come to the conclusion that the usual resolution of reference to the Committee on Elections, of contested cases, adopted December 21, 1881, operated to revive the case of Mackey *vs.* O'Connor, which had received "its death blow" by the action of the House itself over two weeks previously to that time. Such resolution certainly did not make Mr. Dibble a party to the case of Mackey *vs.* O'Connor; and we fail to find any action of the House which at any time had that effect. It therefore seems to us, that if the case is within the statute, then Mr. Mackey has neglected to give the notice prescribed

by the statute to be given to the member whose "election" is to be contested; and, on the other hand, if the case be outside of the statute, the House has never taken any order for proceedings in the matter against Mr. Dibble, the sitting member, and without such order the committee are without jurisdiction to act concerning Mr. Dibble in the premises, having neither the statute nor any precedents of the House on which to support such claim for jurisdiction.

Under that provision of the Constitution which makes the House of Representatives the judge of the election, returns, and qualifications of its members, the House may adjudicate the question of right to a seat in either of the four following cases: (1) In the case of a contest between a contestant and a returned member of the House, instituted in accordance with the provisions of title 2, chapter 8, of the Revised Statutes; (2) in the case of a protest by an elector of the district concerned; (3) in the case of a protest by any other person; and (4) on the motion of a member of the House. The proceeding in the first of these cases is, by the Revised Statutes, made a proceeding *inter partes* —a suit or action in which the contestant is plaintiff and the returned Representative defendant.

A case adjudicated by the House on the protest of an elector, or other person, or on the motion of a Representative, is not an action *inter partes*. It is a proceeding under the Constitution, and not under the statute.

The action *inter partes* provided for by the Revised Statutes abates on the death of either party. While the power of the House to adjudicate any question of title involved in that action survives, the action itself abates upon the death of either party thereto.

It follows that the contest of Mackey vs. O'Connor abated on the death of Mr. O'Connor. That contest was an action *inter partes*. It was the technical action specially provided for in the Revised Statutes.

If the House shall hereafter adjudicate any of these questions, in a proceeding against Mr. Dibble, it will have the power, under the Constitution, to provide the rules for such adjudication.

When the House undertakes the adjudication of the right of a member to his seat on the protest of an elector or other person, or on the motion of a Representative, it does not look to the statutes for its rules of procedure; it prescribes its own rules, in the exercise of its unquestionable constitutional power. If it finds any of the rules prescribed by law for technical contests available and useful in the case it adopts them. Such rules then have force, not because found in the statutes, but because adopted by the House. But this constitutional power of the House to prescribe the rules for such adjudications is not an absolute or undefined power to be arbitrarily exercised by the House. Like every other constitutional power of the House, it is to be exercised in subordination to those principles of justice which lie at the root of the Constitution and send their influences through all its provisions. For an adjudication made on the protest of an elector or other person, or on motion of a Representative, the House has no constitutional right to prescribe any rules which shall bind the sitting member by pleadings or averments which he never made, by the testimony of witnesses whom he never had an opportunity to examine or cross-examine, by stipulations or admissions, or waivers which he never made, or by laches which he never incurred. The House has no right to make the title of a Representative to his seat subject to the acts or omissions, the diligence or laches, the wisdom or folly, of another man.

But if it were conceivable that the contest, which is by the Revised

Statutes so clearly made a proceeding *inter partes*, could survive one of the parties, it would, nevertheless, be certain that when the House seated Mr. Dibble on his credentials that contest was dismissed and passed from the jurisdiction of the House. From the time when Mr. Dibble took his seat, in pursuance of the resolution of the House, it was his right to that seat which was to be assailed by any contestant, or claimant, or protestant. Since that time Mr. O'Connor's right has been a question for the adjudication of the House, not because it was once involved in the contest of Mackey *vs.* O'Connor, but because it is now involved in the question of Mr. Dibble's right to the seat which he occupies. When the House admitted Mr. Dibble to the seat without condition or reservation it invested him with the right which belongs to other sitting members under the Constitution and the law to receive due notice of any proposed contest, to have the opportunity to answer, to examine his own witnesses, to cross-examine those of his opponents, and to be concluded by no acts, omissions, stipulations, laches, or waivers except his own.

It may, perhaps, be suggested that the contest of Mackey *vs.* O'Connor was revived and referred to the committee by the resolution which was adopted December 22, 1881, in the following words:

Resolved, That all of the testimony and all other papers relating to the rights of members to hold seats on this floor in contested cases now on file with the Clerk of this House or in his possession, and all memorials, petitions, and other papers now in the possession of this House, or under its control, relating to the same subject not otherwise referred, be, and the same hereby are, referred to the Committee on Elections, and ordered to be printed.

But the answer is obvious. The resolution did not refer to the committee papers which related to abated contests, but only those which related to pending contests. It did not revive dead suits. It only referred to the committee papers which related to existing suits. An order of reference places a paper before the committee for what it is worth. It imparts no new legal character or quality to the paper. It does not transform an answer in the case of Mackey *vs.* O'Connor into an answer in the case of Mackey *vs.* Dibble. It does not transform illegal evidence into legal evidence. It does not transform a witness for or against Mr. O'Connor into a witness for or against Mr. Dibble. It does not transform an admission, stipulation, or waiver by Mr. O'Connor into an admission, stipulation, or waiver by Mr. Dibble. It does not transform a dead suit, to which the papers relate, into a revived and pending action.

The first and only notice of contest of his seat ever served on the sitting member, Mr. Dibble, by Mr. Mackey, was not served until January 4, 1882. Thereupon Mr. Dibble filed with the committee a protest against the committee's proceeding to consider and act upon the case of Mackey *vs.* O'Connor, because it was evident from the notice served by Mr. Mackey that it was the intention of the contestant to assail his right to his seat by means of a case to which he was not a party. But a majority of the committee decided to proceed with the case, and overruled the protest of the sitting member. For the reasons already set forth, we are of the opinion that the protest should have been sustained.

We cannot concur in establishing as a precedent that a member of this House, duly admitted to his seat, can be rightfully removed therefrom without any opportunity of defending his title thereto, either by pleading his defense, or by introducing evidence in his behalf. Nor can we subscribe to the opinion that the Committee on Elections, under its ordinary powers, can summon a member of this House to defend a cause in which he is not the contestee, in which he is in no way named as a party, and in which the House has not only not required him to appear,

but has by its action declined to make him a party. If such a precedent is to be established, it will be giving to the Committee on Elections jurisdiction to act outside of the statute, and to inquire as to the seat of any member on the floor at its discretion, and without the order of the House.

III.

A few words as to the claim of the contestant concerning the *prima facie* case.

On pp. 10, 11 of the printed Record, we find that the contestant himself introduced the following certificate:

STATE OF SOUTH CAROLINA,
Office of Secretary of State :

I, R. M. Sims, secretary of state, do hereby certify that the following is a correct statement of the total number of votes cast in the several counties comprising the second Congressional district of South Carolina, and also of the votes cast for a member of Congress from said district at the general election held November 2d, 1880, as certified to by the State board of canvassers:

| | Total No. | M. P. O'Connor. | E. W. M. Mackey. |
|------------------|-----------|--------------------|---------------------|
| Charleston | 19,541 | 11,420 | 8,112 |
| Orangeburg | 6,339 | 3,627 | 2,712 |
| Clarendon | 3,986 | . 2,513 | 1,473 |
| | 29,866 | 17,569 | 12,297 |

Witness my hand and the seal of State, at Columbia, this 20th day of January, A.D. 1881, and in the 105th year of American Independence.

[SEAL.]

R. M. SIMS,
Sec. State.

In his brief (p. 4) he claims that certain boxes were not counted by the county canvassers, and also claims the vote thereat to have been as below copied from said brief. Without conceding the sufficiency of the evidence of the said votes, for reasons hereinbefore stated, we give his figures as claimed in his brief, page 4, as follows:

| | M. P. O'Connor. | E. W. M. Mackey. |
|--------------------|--------------------|---------------------|
| Calamus Pond | 119 | 511 |
| Strawberry | 90 | 573 |
| Biggin Church..... | 63 | 380 |
| Enterprise | 161 | 385 |
| Brick Church..... | 16 | 732 |
| Ten-mile Hill..... | 5 | 603 |
| Black Oak | 11 | 393 |
| Fogle's | 40 | 254 |
| Fort Motte | 85 | 279 |
| Lewisville | 236 | 700 |
| Bookhardt's | 69 | 212 |
| | 895 | 5,022 |

Applying these figures to the vote canvassed, we have the following summary, viz:

| | O'Connor. | Mackey. |
|---|-----------|---------|
| Vote canvassed..... | 17, 569 | 12, 297 |
| Vote claimed by Mackey in his brief as not canvassed..... | 895 | 5, 022 |
| | 18, 464 | 17, 319 |

This still leaves O'Connor a majority of 1,145 on the *prima facie* case.

The contestant attempts to overcome this by secondary evidence of various kinds; but we find in the way of considering this secondary evidence the objections heretofore alleged, going to the authenticity and genuineness of the testimony as filed. It would be extremely dangerous to establish as a precedent the admissibility of parol testimony to overturn the official returns of an election, and, in addition, to accept a copy of such parol testimony, made by one of the parties and his agents, in place of the original testimony by such party destroyed.

But the contestant goes further, and claims a majority of 9,278; and in order to arrive at this conclusion, he takes for granted that the ballot-boxes were stuffed by Democrats, but that every Republican voted but a single vote, in the face of the fact that the very papers on which he relies as supervisor's returns to establish his case state that Republican ballots were found in the boxes when opened with other Republican ballots folded inside at ten different polling precincts, viz: In Charleston County, at court-house (p. 28), Marion engine-house (p. 75), Henderson's store (p. 92), Pinopolis (p. 124), and Mount Pleasant (p. 137); in Orangeburg County, at Jamison's (p. 226), Washington Seminary (p. 243), and Cedar Grove (p. 260); in Clarendon County at Fork (p. 314), and Jordan's (p. 330); and also in face of the fact that the Republican supervisor of Orangeburg poll, one of his own witnesses, testifies that two Republicans were caught in the act of voting double tickets at that poll (p. 232).

In addition to this, the testimony of a manager at Griffin's poll (p. 637), introduced in behalf of contestee, and uncontradicted, is to the effect that when the box was opened 51 Republican tickets were discovered folded together in sundry packages.

We cite these merely to show that this claim of the contestant, so intrinsically improbable, is defeated by the very papers by which he is attempting to overthrow the returns of the election, as declared by the lawful authorities of the State.

This extraordinary creation of a majority for the contestant does not appear to be equaled in any instance in our knowledge, unless it be in the case of *Buttz vs. Mackey*, in the Forty-fourth Congress, in which the present contestant was contestee, and in which his seat was vacated on proof (*inter alia*) that 25 of his supporters deposited for him over 600 votes, by voting for him twice at every precinct but one in the City of Charleston. (See Smith's Dig. Elec. Cases, p. 685.)

The undersigned, for the foregoing reasons, recommend the adoption of the following resolution, as a substitute for the resolutions reported by the majority of the committee:

Resolved, That the contest entitled *E. W. M. Mackey vs. M. P. O'Connor*, for a seat in the Forty-seventh Congress of the United States for the second Congressional district of South Carolina, be dismissed.

S. W. MOULTON.
G. AHERTON.

CARLOS J. STOLBRAND vs. D. WYATT AIKEN.**THIRD CONGRESSIONAL DISTRICT OF SOUTH CAROLINA.**

In this case the testimony on behalf of contestant was taken before a United States commissioner, and the contestee at the time objected and excepted to the competency of the officer.

Held, That the officers authorized to take testimony in cases of contested elections are specially designated by statute; and United States commissioners not being so designated cannot act without the written consent of the parties. Contest dismissed.

The House adopted the report.

APRIL 6, 1882.—Mr. G. W. JONES, from the Committee on Elections, submitted the following

REPORT:

The Committee on Elections, to whom was referred the case of C. J. Stolbrand vs. D. Wyatt Aiken, from the third Congressional district of South Carolina, having had the same under consideration, respectfully submit the following report :

All the testimony in the case was taken in behalf of the contestant before E. W. Stoerber, United States commissioner. The contestee, at the threshold, excepted to the competency of the officer.

The following are the statutory provisions applicable to the question raised by the exception.

Revised Statutes, p. 19 :

SECTION 110. When any contestant or returned member is desirous of obtaining testimony respecting a contested election, he may apply for a subpoena to either of the following officers who may reside within the Congressional district in which the election to be contested was held:

First. Any judge of any court of the United States.

Second. Any chancellor, judge, or justice of a court of record in the United States.

Third. Any mayor, recorder, or intendant of any town or city.

Fourth. Any register in bankruptcy or notary public.

SEC. 111. The officer to whom the application authorized by the preceding section is made shall thereupon issue his writ of subpoena, directed to all such witnesses as shall be named to him, requiring their attendance before him at some time and place named in the subpoena, in order to be examined respecting the contested election.

SEC. 112. In case none of the officers mentioned in section one hundred and ten are residing in the Congressional district from which the election is proposed to be contested, the application thereby authorized may be made to any two justices of the peace residing within the district; and they may receive such application and jointly proceed upon it.

SEC. 113. It shall be competent for the parties, their agents or attorneys authorized to act in the premises, *by consent in writing*, to take depositions without notice; also, by such *written consent*, to take depositions (whether upon or without notice) before any officer or officers authorized to take depositions in common law, or civil actions, or in chancery, by either the laws of the United States or of the State in which the same may be taken, and *to waive proof* of the official character of such officer or officers. Any written consent given as aforesaid shall be returned with the depositions.

The officers authorized to take testimony are specially designated.

It is, however, *specially* provided that "by written consent" testimony may be taken before certain other officers mentioned. United States commissioners are not mentioned in the first class, and, if included in the latter, cannot act without the written consent of the parties.

It is apparent that the exception is well taken, and must be sustained.

It is insisted that the House of Representatives, in judging of the elections, qualifications, and returns of its members, is not bound by the rigid rules of judicial procedure. This is true, but applies only to exceptional cases, not provided for by the "rules prescribed." It would be worse than idle to prescribe rules if they may be willfully and unnecessarily disregarded.

This view is decisive of the case, and renders unnecessary further statement of it.

We recommend the adoption of the following resolution:

Resolved, That C. J. Stolbrand have leave to withdraw his papers.

GEORGE Q. CANNON vs. ALLEN G. CAMPBELL.

TERRITORY OF UTAH.

Contestant alleges that he received 18,568 votes against 1,357 cast for contestee, and was legally elected Delegate from the Territory of Utah.

Contestee denies that 18,568 votes were legally cast for contestant; that contestant was not eligible or qualified to be elected or serve as such Delegate because he was an unnaturalized alien; and because he was a polygamist living and cohabiting with plural wives.

Held, That contestant did receive the highest number of votes cast. Certificates of returns of elections made by county canvassing boards to the secretary of the Territory, under the Territorial law, constitute the proper mode to be pursued in the Territories in respect to the election of Delegates; and such records duly authenticated by a seal will be received in evidence without having been first introduced in evidence before the magistrate who takes and certifies the depositions.

Contestant was duly naturalized as appeared by his certificate of naturalization and by the record of the court, which latter cannot be collaterally questioned.

Delegates are the creatures of statute, and the legislative branch of the Government may abolish the office altogether.

The House may at any time by a majority vote exclude from the limited membership which it now extends to Delegates from Territories any person whom it may for any reason judge to be unfit to hold a seat as a Delegate. And contestant, having admitted that he has plural wives, and that he teaches and advises others to the commission of that offense, he should be excluded from the House.

Contestee, however, having only received a minority of the votes cast, was not elected, and the seat is declared vacant.

The House adopted the majority report.

FEBRUARY 28, 1882.—Mr. CALKINS, from the Committee on Elections, submitted the following

R E P O R T :

IN THE MATTER OF THE CONTEST OF GEORGE Q. CANNON AGAINST ALLEN G. CAMPBELL, TERRITORY OF UTAH.

VIEWS OF MR. CALKINS.

Your committee, to whom was referred the said contest between the parties for the seat, having had the same under consideration, beg leave to make the following report:

On the 20th day of January, 1881, from the city of Washington, the contestant, Geo. Q. Cannon, served on the contestee the following notice of contest:

WASHINGTON, D. C., *January 20, 1882.*

ALLEN G. CAMPBELL, Esq.:

SIR: I have the honor to notify you that I shall contest your right to hold a seat in the House of Representatives of the Forty-seventh Congress of the United States as Delegate from the Territory of Utah, and also your right either to be sworn or enrolled, or to hold a certificate of election as such Delegate, on the following grounds:

1. That the returns of the election of Delegate to the Forty-seventh Congress of the United States, held on the 2d day of November, 1880, in the several counties of the Territory of Utah, which were prepared and forwarded to the secretary of the Territory, under sections 23 and 24 of the compiled laws of the Territory of Utah, copies of which returns, marked respectively A, B, C, D, &c., are hereto annexed, showed, as the fact was, that 18,568 votes were legally cast for me at said election; that only 1,357 votes were cast for you, and that only 8 votes were cast for all other candidates, and that I was therefore legally elected to said office of Delegate from the Territory of Utah in the Forty-seventh Congress, and was also entitled to receive the certificate of election, and to be enrolled and sworn as such Delegate.

2. That said returns showed, as the fact was, that you received less than one-thirteenth of the votes legally cast at said election, and therefore were not entitled to hold the said office of Delegate from the Territory of Utah in the Forty-seventh Congress, or to be enrolled or sworn as such Delegate, or to receive the certificate of election to said office.

3. That the action of the governor of the Territory of Utah in withholding the certificate of election from me, and giving it to you, was illegal and fraudulent.

Very respectfully,

GEO. Q. CANNON.

The exhibits attached to and forming a part of the notice of contest were certificates made by the secretary of Utah Territory, under the seal of the Territory.

On the 26th day of February, 1881, Mr. Campbell, the contestee, answered the notice so served on him, in the following words:

SALT LAKE CITY, UTAH,
February 26th, 1881.

GEORGE Q. CANNON, Esq.:

SIR: To your notice of January 20th, 1881, served on me on the 4th day of the present month, to the effect that you will contest my right to hold a seat in the House of Representatives of the Forty-seventh Congress of the United States as Delegate from the Territory of Utah, &c., I have the honor to answer in respect to the facts alleged by you, and to state the grounds on which I rest the validity of my election, as follows:

1. I admit that returns of the election of Delegate to the Forty-seventh Congress of the United States, held on the 2d day of November, 1880, in the several counties of the Territory of Utah, were made to the secretary of said Territory, of which copies are annexed to your notice and referred to therein as marked respectively A, B, C, D, &c., but I deny that said returns showed, or that the fact was, that 18,568 votes were legally cast for you at said election, or that you were legally or otherwise elected to said office of Delegate from the Territory of Utah in the Forty-seventh Congress, or entitled to receive the certificate of election, or to be enrolled, sworn, or otherwise in

any manner recognized as such Delegate. I deny that said returns showed, or that the fact was, that I received less than one-thirteenth of the votes legally cast at said election, or that I was not entitled to hold the said office of Delegate from the Territory of Utah in the Forty-seventh Congress, or to be enrolled and sworn as such Delegate, or to receive the certificate of election to said office.

I deny that the action of the governor of the Territory of Utah in withholding the certificate of election from you, and in giving it to me, was illegal or fraudulent.

And I allege as grounds of the foregoing denial and of my claim that my election was valid, as follows:

1. No statute, Federal or Territorial, required or authorized said returns of said election to be placed before the governor of said Territory, or that authorized or required him to open or inspect said returns as the whole or any part of the evidence on which he was required to determine the result of said election, and this state of the law has been judicially declared in said Territory.

2. Said returns do not disclose the names, sex, or qualifications of the voters whose votes are therein aggregatively stated.

3. A large number of the voters who voted for you were females, and therefore not qualified to vote for members of the legislative assembly in said Territory, and consequently not qualified to vote for Delegate to Congress at said election. The number of such illegal votes can only be estimated, but such votes were given in all the counties in relatively large numbers and are an undistinguishable part of the votes mentioned in each of said returns.

4. You were not at the date of said election eligible or qualified, nor capable of being made eligible or qualified, to be elected to or serve in said office of Delegate, because you were born a subject of Great Britain and have never been naturalized as a citizen of the United States; you are not a man of good moral character; you are not attached to the principles of the Constitution of the United States, nor well disposed to the good order and happiness of the same; you have been for many years a polygamist, living and cohabiting with four women as wives, to whom you have joined yourself by a pretended ceremony of marriage; you do not loyally yield assent and obedience to the act of Congress against polygamy in the Territories; you have for many years last past publicly endeavored to incite others to violate that statute in the Territory of Utah; therefore all the votes given for you at said election are void.

5. At the time of said election, on the second day of November, 1880, you were known throughout the Territory of Utah to be an alien and not eligible to said office of Delegate. All the persons voting for you were aware and had full notice that you were an alien, unnaturalized, and disqualified to hold any office under the laws of the United States, or of any of the Territories thereof.

6. I am a native-born citizen of the United States, and qualified by age and residence in said Territory to be elected at said election to said office of Delegate to the House of Representatives of the Forty-seventh Congress of the United States, and besides eight scattering votes cast at said election, I received all the legal votes given at said election for said office of Delegate in the Forty-seventh Congress from the Territory of Utah; that on the 8th day of January, 1881, the governor of said Territory, in pursuance of the statute in such case made and provided, and in the due and regular exercise of the power in him vested, did declare and certify, under his hand and the great seal of said Territory, that I was the person having the greatest number of votes, and therefore duly elected as Delegate from said Territory to said Congress.

Respectfully, yours,

A. G. CAMPBELL.

The issue was thus formed on three distinct grounds: There was an allegation by the contestant that he was elected by reason of his having received the largest number of legally-cast votes, as shown by his exhibits attached to his notice. To this Mr. Campbell, the contestee, answered, denying the notice of contest on the first ground, namely, that of having received the highest number of votes. His denial was qualified. Affirmatively he alleged that Mr. Cannon was not a citizen of the United States, but was an unnaturalized alien; and, in the next place, that he was a polygamist, living in open violation of the laws of the United States, and that for these reasons he was disqualified. Thus three questions were presented to this committee for decision:

First. Did Mr. Cannon receive the highest number of legally-cast votes for the office of Delegate in Congress?

Second. Was he a citizen of the United States at that time, or has he

since become a citizen, and did he possess the other necessary qualifications to be a Delegate in Congress?

Third. Was he a polygamist at the time of his election; and, if so, is that a disqualification?

At the threshold of this case we were met with a certificate held by Mr. Campbell, the contestee, from the governor of Utah Territory. We decline to enter into a discussion of the *prima facie* right of Mr. Campbell to take his seat as a Delegate on this certificate, because we construe the action of the House in passing on it as a decision adverse to Mr. Campbell, and, being compelled to report on the whole case, we deem it a piece of supererogation to reopen the case of the *prima facie* right, being satisfied with the action of the House thereon. We dismiss that part of the case from further consideration.

The next question that meets us is a question of practice raised by the contestee; which is, that there is no competent evidence before the committee relative to the number of votes cast for Mr. Cannon at the last election, and it is therefore contended that, on the certificate issued by the governor to Mr. Campbell, he is entitled *pro confesso* to the seat on the final hearing.

The facts before us are as follows: A certified transcript made by the Secretary of the Territory, under the seal thereof, was filed by Mr. Cannon with the Clerk of the House of Representatives on the — day of November, 1880, and was duly referred to this committee under a resolution of the House adopted on the — day of December, 1881. It did not reach the committee at the same time that the other papers in the contest came into its possession; but shortly thereafter it was sent by the Clerk of the House to this committee. These certificates purport on their face to be certified transcripts of the returns made by the county canvassing boards to the secretary of the Territory, under the laws of Utah.

We therefore hold that certificates of election made by county canvassing boards to the secretary of the Territory (under the Territorial law relative to the election of other Territorial officers of the Territory—see sections 22, 23, and 38, *et seq.*) constitute the proper mode to be pursued in the Territories in respect to the election of Delegates; and that that mode gives effect to the law, which makes it the duty of the governor to canvass the votes, and to give a certificate to the person receiving the highest number of votes for Delegate in Congress. It has been the practice of this committee to receive all records duly authenticated by a seal, without having them first introduced before the magistrate who takes and certifies the depositions. We know of no other practice that has obtained since the foundation of the government. This class of evidence has never been held to fall within the meaning of the law passed by Congress relative to contested-election cases. The testimony there referred to is the testimony of witnesses, or the introduction of such documents as need identification or further proof before their competency is admitted; and we hold that it does not apply to records and evidence which a seal may make perfect without further identification. If the contestee has been or is surprised at the introduction of this testimony, his proper course is to make application for a continuance, so that he may be allowed to take further testimony. Not having made such application, we presume that he does not wish to avail himself of that course in this case. McCrary seems to hold the better practice to be otherwise (section 362), but section 353 so modifies the doctrine first laid down that it is not in conflict with the view the committee take.

We therefore find that the evidence establishes that Mr. Cannon received 18,568 votes; that Mr. Campbell received 1,357 votes; and that there were scattering 8 votes. Mr. Cannon, therefore, received a majority of all the votes cast at the November election of 1880, and is duly elected a Delegate from the Territory of Utah, unless he is disqualified from holding a seat for one or more of the reasons alleged in the answer of the contestee.

CITIZENSHIP.

We next examine the question as to citizenship. The following are the statutory provisions relative to the naturalization of aliens:

Any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:

First. That he shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court of some one of the States, or of the Territorial districts of the United States, or a circuit or district court of the United States, three years at least before his admission, that it was, *bona fide*, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty whereof such alien may, at the time, be a citizen or subject.

Secondly. That he shall, at the time of his application to be admitted, declare on oath or affirmation, before some one of the courts aforesaid, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever, and particularly, by name, the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Thirdly. That the court, admitting such alien, *shall be satisfied* that he has resided within the United States five years at least, and within the State or Territory, where such court is at the time held, one year at least; and it shall further *appear to their satisfaction*, that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; provided that the oath of the applicant shall, in no case, be allowed to prove his residence. (2 Stat., 153.)

Any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arriving at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of the first section of the act to which this is in addition, three years previous to his admission; provided such alien shall make the declaration required therein at the time of his or her admission; and shall further declare, on oath, and prove to the satisfaction of the court, that for three years next preceding, it has been the *bona fide* intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization.

Mr. Cannon presented to the committee, and it is also in evidence, the following certificate of naturalization:

United States first district court for the Territory of Utah.

UNITED STATES OF AMERICA,
Territory of Utah, Great Salt Lake County, ss:

Be it remembered, that on the seventh day of December, A. D. 1854, George Q. Cannon, a subject of Queen Victoria, made application and satisfied the court that he came to reside in the United States before he was eighteen years of age; and thereupon the said George Q. Cannon appeared in open court and was sworn in due form of law, and on his oath did say, that for three years last past it has been his *bona fide* intention to become a citizen of the United States; and to renounce and abjure, forever, all allegiance and fidelity to every foreign prince, potentate, state, and sovereignty whatever. And thereupon, the court being satisfied by the oaths of Joseph Cain and Elias Smith, two citizens of the United States, that the said George Q. Cannon for one year last

past has resided in this Territory, and for four years previous thereto, he resided in the United States; that during that time he has behaved as a man of good moral character; that he is attached to the principles of the Constitution of the United States, and well disposed to the good order of the inhabitants thereof, admitted him to be a citizen of the same. And thereupon the said George Q. Cannon was in due form of law sworn to support the Constitution of the United States, and absolutely and entirely to renounce and abjure, forever, all allegiance and fidelity to every foreign prince, potentate, state, and sovereignty whatever, and particularly to Victoria, Queen of Great Britain and Ireland, whose subject he heretofore has been.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court this seventh day of December, one thousand eight hundred and fifty-four and of the Independence of the United States the seventy-ninth.

[L. s.]

W. I. APPLEBY, Clerk.

It will be observed that this certificate is in due form, purports to be issued out of a court of competent jurisdiction, and is duly signed and sealed. On its face it is a transcript of a record of a court of competent jurisdiction; and, if nothing be shown to overcome its efficacy, it must be taken like all other records of judicial proceedings as absolute verity. It is attempted to be overcome by the contestee in two ways: First, by showing that there was in fact no record of such proceedings in the court out of which it purports to be issued; and, second, that Mr. Cannon had not been a resident of any of the States or Territories of the United States for five years next preceding the date on which it shows him to have been naturalized. As to the first point (that there was no record), several witnesses were examined who now have the custody of records of the court held at that time, and a summary of the testimony may be given as follows:

A book was presented before the notary public who took the depositions in this case, and was identified as one of the records of the court of Utah in 1854. It was then the first district court of the Territory of Utah. Subsequently it became the third district court. On the fly-leaf of this book were written the following words: "Records of declarations of intention to become a citizen of the United States. Also, of citizenship in the supreme and first judicial courts of the United States in and for the Territory of Utah, Great Salt Lake City. W. I. Appleby, clerk. September 20, 1851." On the outside of this book was printed in a large character the letter A. It has always remained in possession of the proper officers of that court, and is now in the possession of the supreme court of said Territory as one of its records. Many hundred naturalization papers (including that of the contestant, Mr. Cannon) were made from this book and are now scattered throughout the Territory. It appears to have been printed in double columns, so that the outer portion of its page might be separated from its inner portion, leaving the record on the inner portion or stub. The outer portion was torn off and given to the person naturalized. This was sealed with the seal of the court. There was thus left on the stub an exact record of what was done by the court, and a certificate or transcript was given to the person naturalized.

It is objected that this was not signed by the judge, and was therefore not a proper record of the court, and that the naturalization papers thus issued are void. We cannot agree to that proposition. In some of the States of the Union the signing of the record by a judge is made mandatory, in others it is made directory only, and in others still it is not required at all. At common law no judgment-roll was required to be signed by the presiding judge. Hence it is purely a statutory provision. We are inclined to the opinion that the law is not mandatory, as applied

to the Territory of Utah, requiring the judge to sign the record. But however this may be, we are inclined to hold that this was a sufficient naturalization under the laws of the United States, especially where it is affirmatively shown by Mr. Cannon that the proceedings in court were regular in form; that witnesses were duly sworn who testified to necessary facts, and that judgment was orally pronounced by the court from the bench. It is the judgment of the court which makes its action efficacious, and not the accuracy with which the clerk writes it down. (*Stephen Pl.*, 138; *Whitney vs. Townsend*, 67 N. Y., 40; *Rollins vs. Henry*, 78 N. C., 342; *Van Vleit vs. Philips*, 5 Iowa, 558; *Childs vs. McChesny*, 20 Iowa, 431; *Jorgenson vs. Griffin*, 14 Minn., 464).

Our attention has been called to the decision of Judge Hunter, of Utah Territory, in a proceeding involving the question here presented. We have no disposition to comment on this opinion. We deny, however, that it goes to the length claimed for it by the contestee. On this point, therefore, we hold that the certificate is valid and binding, and that Mr. Cannon, for the purpose of this contest (so far as that point is involved), is a naturalized citizen.

The other point made, that Mr. Cannon had not been a resident of any State or Territory of the United States for five years next preceding the date of naturalization, involves quite a novel question. We hold, however, on this point, that the record cannot be collaterally questioned, and that therefore it is incompetent to show by evidence in this proceeding that the certificate is null. (*Pruit vs. Cummings*, 16 Wend., 616; *State vs. Penny*, 10 Ark., 616; *McCarthy vs. Marsh*, 1 Seld., 263; *In re Colman*, 15 Blatchf., 406; *Spratt vs. Spratt*, 4 Pet., 393).

A statement of the facts, however, may not be out of place:

It appears that Mr. Cannon came to the United States from Great Britain and settled at Nauvoo, in the State of Illinois, in the year 1842. He left that town when the colony known as the Mormon colony was driven out of Illinois by the State authorities. He started with them across the "desert," and in 1847 arrived at the place now known as Salt Lake City, in the Territory of Utah. It was then a Territory owned by the Government of Mexico, which was by treaty, on July 4, 1848, ceded to the United States. He staid in that locality a short time, having bought a town lot and engaged himself to be married to Miss Hoagland. He then left for California, where he staid a year engaged in gold-mining. He then went to the Hawaiian Islands with several other persons, as a missionary for his church. He remained there until September or Octobor, 1854, when he returned to Salt Lake City and married Miss Hoagland, and he has ever since resided in that Territory. On these facts the contestee stoutly claims that the court had no authority to issue the naturalization paper held by Mr. Cannon. But, as we have already said, it is unnecessary to go into an analysis of those facts, as we hold that the records of the court cannot be attacked collaterally. It requires a direct proceeding to set aside the record which Mr. Cannon now has. We therefore hold that Mr. Cannon is a naturalized citizen of the United States, and that he is not disqualified, on the ground of alienage, from holding his seat as Delegate.

POLYGAMY.

The next inquiry which presents itself is that of polygamy. On the oral argument of this case before the committee the following admission (as it appears in the printed Record at page 60) was referred to, and was, as the committee then understood, and now understands, admitted

to have been made by Mr. Cannon in this contest as an admission of fact for the purpose of saving the time and expense of taking further proof on that point. It was at least not denied by Mr. Cannon or his counsel, and this was affirmed by the contestee in the oral argument. The admission is as follows:

In the matter of George Q. Cannon. Contest of Allen G. Campbell's right to a seat in the House of Representatives of the Forty-seventh Congress of the United States as Delegate from the Territory of Utah.

I, George Q. Cannon, contestant, protesting that the matter in this paper contained is not relevant to the issue, do admit that I am a member of the Church of Jesus Christ of Latter-day Saints, commonly called Mormons; that, in accordance with the tenets of said church, I have taken plural wives, who now live with me, and have so lived with me for a number of years and borne me children. I also admit that in my public addresses as a teacher of my religion in Utah Territory I have defended said tenet of said church as being in my belief a revelation from God.

GEORGE Q. CANNON.

We are now brought face to face with the question whether this House will admit to a seat a Delegate who practices and teaches the doctrine of a plurality of wives, in open violation of the statute of the United States and contrary to the judgment of the civilized world. There are several clauses in our Constitution which may have some bearing on this subject.

Section 2, Article I, of the Constitution is as follows:

The House of Representatives shall be composed of members chosen every second year by the people of the several States, &c.

SECTION 5.

Each House shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business. * * *

CLAUSE 2.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with a concurrence of two-thirds, expel a member.

ARTICLE I, SECTION 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press.

ARTICLE IV, SECTION 3, CLAUSE 2.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

These are the provisions of the Constitution which may be held to have some bearing on the question of the qualifications of Delegates.

In the first place, is a Delegate from a Territory a member of the House of Representatives within the meaning of the Constitution? The second section of the 1st article says: "The House of Representatives shall be composed of *members* chosen every second year by the people of the *several States*; and the electors in each State shall have the qualifications requisite for electors in the most numerous branch in the State legislature." There is no provision in the Constitution for the election of *Delegates* to the House of Representatives or to the Senate. They are entirely the creature of statute. They are clearly not within the clause of the Constitution last above quoted, for the House is "composed of *members* chosen every second year by the people of the *several States*;" and nothing is said of the Territories. Delegates have never been re-

garded as members in any constitutional sense, because their powers, duties, and privileges on the floor of the House, when admitted, are limited. They may speak for their Territories ; they may advocate such measures as they think proper ; they may introduce bills and serve on committees ; but they are deprived of the right to vote. And we doubt whether Congress could clothe them with the right to vote on measures affecting the people of the States or of the Territories, because they do not represent any integral part of the nation, but simply an unorganized territory belonging to the whole people. Hence Delegates are creatures of statute, and it would be competent at any time for the legislative branch of the Government to abolish the office altogether.

The writer of this report goes further than that. He holds that it is incompetent for Congress and the Executive to impose on any future House the right of Delegates to seats *with defined qualifications*. That is to say, when the several laws were passed giving the Territories the right to this limited representation, those laws were binding only on the lower House, which permitted them to be or made it possible for them to be passed, and were persuasive only to the Houses of future Congresses. For some purposes each House of Congress is a separate, independent branch of the Government. It is made so by the Constitution. For example, each house is the judge of the elections and returns of its own members, and neither the Executive nor the Senate can interfere with that constitutional prerogative. Each House is independent in its expenditure of its contingent fund, and in the government of its own officers. It is independent in the formation of its own committees, in clothing them with power to take evidence, to send for persons and papers, and to investigate such matters as are within its jurisdiction. Each House is independent in its power to arrest and to imprison, during the session of the body, such contumacious witnesses as refuse to abide its order. In many other instances that may be cited each House acts independently of the other. And with reference to the election of Delegates, who (if they hold any office or franchise at all) can be nothing but agents representing the property and common territory of all the people, it operates only on the lower branch of Congress, for their election extends no right to them to interfere with the business of the Senate or to act as members thereof. This must not be construed into an opinion that the writer holds that the House of Representatives may disregard any law which Congress has the constitutional power to pass. Such laws are as binding upon this House as upon any citizen or court. Nor does the writer of this report mean to be understood that it is not competent for Congress to provide, under the Constitution, for legislative representation for Territories, but it is denied that Congress can bind the House by any law respecting the qualification of a Delegate. It cannot affix a qualification by law for a Delegate and bind any House except the one assenting thereto. The qualification of *members* is fixed by the Constitution. Hence they may not be added to or taken from by law. But as to Delegates, they are not constitutional officers. Their qualification depends entirely upon such a standard as the body to which they are attached may make. It is urged this means a legal qualification. This is admitted ; but that legal qualification is remitted to the body to which the Delegate is attached, because it is the *sole* judge of that requisite. It is unfettered by constitutional restrictions and cannot yield any part of this prerogative to the other branch of Congress or the Executive. If it could, the right to amend would follow, and the House might find itself in the awkward position of having the Senate fixing qualifications to Delegates, or the Executive vetoing laws fixing them, and by this

means the power which by the Constitution resides alone in the House would be entirely abrogated.

It is claimed this is an autocratic power. This is admitted. All legislative bodies are autocratic in their powers unless restricted by written constitutions. In this instance there is no restriction.

It is contended that the act of Congress extending the Constitution and laws of the United States over the Territory of Utah, in all cases where they are applicable, extends the constitutional privilege to Delegates and clothes them with membership as constitutional officers of the House. We cannot assent to that view. The very language of the act itself only extends the Constitution and laws over the Territory in cases *where they are applicable*. They cannot be applicable to the election of a Delegate; for if they were, then Congress would have no authority to deprive a Delegate of the right to vote. To contend that the applicability of the Constitution in that respect extends to Delegates proves too much. It is clear, therefore, that that clause of the Constitution relative to the expulsion of a member by a two-thirds vote cannot apply to Delegates, because they hold no constitutional office. It is equally clear that the clause of the Constitution relative to elections, returns, and qualifications of members has no applicability except by parity of reasoning; and we do not dissent from the view that, so far as the qualification of citizenship and other necessary qualifications (except as to age) are concerned, they extend to Delegates as well as to members. (Sec. 1906, R. S. U. S.) This is made so, probably, by the statute, expressly so to all the Territories except to Utah Territory, and inferentially to that Territory. It follows, as a logical sequence, that the House may at any time, by a majority vote, exclude from the limited membership which it now extends to Delegates from Territories any person whom it may judge to be unfit for any reason to hold a seat as a Delegate.

It cannot be said that polygamy can be protected under that clause of the Constitution protecting every one in the worship of God according to the dictates of his own conscience, and prohibiting the passage of laws preventing the free exercise thereof.

It is true that vagaries may be indulged by persons under this clause of the Constitution when they do not violate law or outrage the considerate judgment of the civilized world. But when such vagaries trench upon good morals, and debauch or threaten to debauch public morals, such practice should be prohibited by law like any other evil not practiced as a matter of pretended conscience.

The views which we have just expressed render it unnecessary for us to discuss further the various propositions involved. In the face of this admission of Mr. Cannon we feel compelled to say that a representative from that Territory should be free from the taint and obloquy of plural wives. Having admitted that he practices, teaches and advises others to the commission of that offense, we feel it our duty to say to the people of that Territory that we will exclude such persons from representing them in this House. In saying this we desire to cast no imputation on the contestant personally, because in his deportment and conduct in all other respects he is certainly the equal of any other person on this floor.

This leaves one other question for decision, namely: Is Mr. Campbell entitled to the seat, having received only a minority of the votes cast? We are aware that in England authorities are found for the position that votes cast for ineligible persons are simply void, and that those cast for a person qualified (even though in the minority) are effectual, and that thereby the candidate against whom the majority of voters

declared may receive the office. In a few of the States of the Union this principle applies, but the great weight of American authority is to the contrary, and we do not hesitate to say that the better doctrine is that a minority of legal votes does not elect. We therefore say that Mr. Campbell, not having received the majority of the votes cast, is not entitled to the seat.

Resolved, That Allen G. Campbell is not entitled to a seat in this Congress as a Delegate from the Territory of Utah.

Resolved, That George Q. Cannon is not entitled to a seat in this Congress as a Delegate from the Territory of Utah.

Resolved, That the seat of Delegate from the Territory of Utah be, and the same hereby is, declared vacant.

VIEWS OF MR. W. G. THOMPSON.

In the matter of contest in case of Cannon vs. Campbell, Utah Territory.

The undersigned, as a member of the Committee on Privileges and Elections, to whom was referred the matter of contest in the above-entitled cause, not being able to agree fully with the majority of said committee who report herein, begs leave to briefly state the reasons for such disagreement, and while I cheerfully concur in the final conclusion of the majority of the committee, and shall vote with them in sustaining the resolution that Mr. Cannon is not entitled to a seat as a Delegate, I do so not merely because it is clearly proven by the evidence, as well as by his admissions in writing, that he practices, teaches and advises other deluded men and women that plurality of wives, in the face of the laws of Congress prohibiting it, is right, because an alleged revelation, through Brigham Young, so declared it, and that such pretended revelation was to be observed before the laws of the land, thereby affording a pretext for the commission of a felony, and under the guise of religion demand immunity from punishment, and with brazen effrontery defy the laws of the land, which all others are bound to obey, and for a breach of which the penalties provided are speedily enforced against them.

The days of inspiration have passed, and murder or other crimes cannot be justified because a claim that some new revelation has been communicated to them by virtue of which the laws of the country can be defied. And while it is a matter of but little moment to the country at large what the peculiar belief of Mr. Cannon may be, still it does become a matter of grave importance when he presents himself as the representative of a great crime, not only a moral crime but a legal crime, denounced as such by the civilized world, and so declared by the highest tribunals of justice in the land, and boldly demands that he shall be recognized as such, and we cannot comply with such demand without making that crime our own; but I am constrained to deny Mr. Cannon a seat as a Delegate for the further reason that he has failed to make a contest for it.

True it is that on the 20th day of January, 1881, he served a notice of contest on Mr. Campbell in due form, and it is also true that Mr. Campbell, on the 26th day of February, 1881, filed his answer to that notice, putting in issue every material allegation set forth in the notice of contest, and especially the allegation that Mr. Cannon had received or was

elected by a majority of the votes legally cast at the election held on the 2d day of November, 1880, and also charging that Mr. Cannon was not at the time of the election a citizen of the United States, thus putting in issue every right upon which Mr. Cannon based his claim to a certificate of election and these being properly in issue, it becomes incumbent upon him to establish by proper and legal testing the truth of all his material allegations. I now ask, how did he do this? I answer, he did not do so. I further say that he never attempted to do so, and when I so declare I do not hedge such declaration with any mere technicality or subterfuge, to avoid meeting the very right of the contestant, but so maintain it upon the broadest principles of well-established rules of practice adopted and enforced by all the courts in the land. But I am answered by the majority that Mr. Cannon has produced as evidence a tabulated or what purports to be a tabulated statement of the votes cast at the election of November 2, 1880, by which it appears that Mr. Cannon had a large majority of all the votes cast, and that such statement is certified to by the secretary of the Territory under his seal of office, and therefore it must be received as evidence. It will be conceded, I think, by all that the committee can consider only legal evidence, such evidence as the laws of Congress prescribe, and that they cannot consider any other. The question is, is this such evidence as the committee can consider for any purpose whatever? I say it is not, and cannot be made so.

Section 108, Revised Statutes of the United States, 1873, provides "that the party desiring to take depositions under the provisions of this chapter shall give notice to the opposite party in writing of the *time and place, when and where*, the same will be taken, of the name of the officer before whom it will be taken, and the name of the witness to be examined, and such notice shall be personally served," &c. These are the plain, unequivocal requirements of the statute, and the wildest latitudinarian will not dare to say that these are merely directory and may be disregarded at the will and pleasure of a contestant or a committee. Each and all of these provisions are mandatory, and while we, as a committee, may have some discretion, some latitude, in the examination of facts, so that even-handed justice may be done, we have none in the matter of law; we are bound by that as we find it, and we have no right to go outside of its plain requirements, and when we do so we act in contravention of law, without authority, and our acts, *unauthorized, must be null and void*. When did Mr. Cannon give such notice? How and when did contestee have notice that such evidence would be taken or used for any purpose?

Every member of the committee knows that contestant does not even claim that he attempted to do so; but, on the contrary, it does clearly appear from the evidence that Mr. Cannon procured this statement without the knowledge of the contestee, and not for the purpose of being used as evidence before the committee, but only for the purpose of being used as evidence before the then Clerk of this House, so as to have his name entered upon the roll of Delegates. And, strange as it may strike every fair and candid mind, the Clerk assumed, in the absence of Congress, to perform its functions; and did, upon this evidence alone, and in the absence of the certificate required by law, *judicially determine* that Mr. Cannon was duly elected, and placed his name upon the rolls; all this in open violation of law, and stands without a precedent. That evidence, then, had expended its force. It was not even among the papers referred by the House to the committee, and never found its way into the hands of the committee until the 6th day of February,

1882, six weeks after the committee had been organized, when it again appeared as evidence on the part of the contestant, and when it had been suggested that no evidence had been taken and the contest was abandoned.

The contestee had a right to the notice required by law; he had a right to be present and cross-examine the witness; he had a right to show that this statement was not the best evidence, and demand that investigation be made into the legality of every ballot cast, as well as the qualifications of each elector, and especially so when we find in evidence this strange law upon the statute books of Utah, then and now in force (act of February 12, 1870, section 43, chapter 2): "That every woman of the age of twenty-one years who has resided in the Territory six months next preceding any general election, born or *naturalized* in the United States, or *who is a wife or daughter* of a native-born or naturalized citizen of the United States, shall be entitled to vote at *any* election in this Territory."

The same law provides that all voters in the Territory shall be required to be registered prior to the election, and the registration list is in the hands of the election officers, and each voter has his or her name marked "voted" on such list; and that list is based on the affidavit of each voter, and shows both the qualification and the sex of the voter. This statement is not evidence of the legality of a single vote. It is not evidence of the qualification of any elector in the Territory, and these facts can only be ascertained by the examination of the register-lists, the ballots, and the electors. The contestee has been denied these rights, each and every one of them. He had a right to rest upon his statutory rights and make no move until he was notified that evidence would be taken. He held the certificate of election then; he holds it now. That certificate contains all the statute requires; it is under the hand of the only officer authorized to give it, and has attached thereto the broad seal of the Territory. It stands to-day uncontested; and no excuse is given why it is uncontested; and the answer of contestee gives denial to all this, and declares that no statute, Federal or Territorial, required or authorized the governor of the Territory to open or inspect these returns as the whole or any part of the evidence on which he was required to determine the result of said election; and this state of the law has been judicially declared in the Territory; and while the committee may not be held to take notice of court decisions, they are bound to know the law as it exists, and to follow the interpretation given by the courts having proper jurisdiction of the subject-matter when attention is called to them.

I am brought to the conclusion that contestant, after he had commenced this contest, by the aid of a clerk, acting without law or authority, and in flagrant violation of both, got his name upon the rolls, considering himself safe, and had, as he supposed, placed the laboring oars in the hands of Campbell, and made him contestant, abandoned the contest, and never attempted to take a word of evidence to show him entitled to a seat, and stands in that attitude now, and ought to remain there. And it behooves us to scan carefully the allegation of Mr. Cannon that he received a majority of the legal votes cast, and more especially so when we are confronted with Territorial statute already quoted, by which the bold attempt is made to enlarge the naturalization laws and confer citizenship upon persons by other means and methods than those prescribed by Congress, whose province alone it is to make such laws; and such attempt is a most unwarranted assumption of power; and when men or women, by virtue of such a law, exercise the

right of suffrage, and foist upon the law-abiding people a representative hostile to the laws of Congress, and inimical to the well-being of our Government, and at open war with civilization itself, can we, dare we, say to the one holding the proper credentials, and who met the contest in the manner pointed out by law, and invited open, full, and fair investigation, that he by any trick or device shall be denied the right of showing in evidence these wrongs?

But admit (which I do not) that the tabulated statement has been properly admitted in evidence, and that the legal presumption is that the facts stated are correct, such presumption is met and overcome by the certificate of election held by contestee, still leaving the burden of proof on the contestant to show by proper evidence that such certificate was fraudulently obtained, and confers no right upon the holder. This contestant had not attempted, but, relying upon the fact that his name appears on the roll as a Delegate, rested his case; and when it is admitted, as all must admit, that it obtained that place wrongfully and without even the color of law, the certificate stands unimpeached, and entitles Mr. Campbell *prima facie* to a seat; and I know of no statute, law, or any revelation, ancient or modern, which gives the contestant in this case superior rights to any other contestant for a seat, or that would place him above the law and its plain requirements.

Again, it is alleged that contestant was not at the time of his alleged election a citizen of the United States, and in proof that he was, and to meet the evidence on this point introduced by contestee, he presents what purports to be a certificate of naturalization issued December 7, 1854, by the clerk of the court having competent jurisdiction to grant such naturalization, but fails to produce any record that such application was made in court, and, indeed, it is not claimed that any such record was ever made or entered in the records of the court, but only an entry of the clerk in his own book that such certificate was issued, not that any such proceedings were had in court. I am answered on this point that the witnesses produced at the time have again been examined, and swear that the proceedings were in the court and before the judge. While this is true, it is also true, as will be seen by the evidence, that one of the witnesses swore that the proceedings were before a judge who in fact was never in the Territory until years after the date of the certificate. The witness afterwards endeavored to correct this, when his attention was called to the blunder, and shows only how unreliable evidence of a record is when carried for *twenty-seven* years in a human head, instead of being in the place the law directs.

I admit the rule of law allowing secondary evidence when the original is lost or destroyed, but I do deny that any rule of law was so broadened as to allow an *original record* to be made twenty-seven years after it should have been entered, or to be made at all by an unauthorized person. In this case there is no pretense that such a record was ever made or entered in the court proceedings of that day, although it is proven that said court was in session at the time and the record of its proceedings for all that term properly entered, but the naturalization of contestant forms no part of it.

Again, the law allows the naturalization of a person coming to this country who was under eighteen years of age at the time of his arrival, but when he applies for naturalization he must show by proper evidence that he had been a *resident* of the United States for three years next preceding his application. I take it that this law does not contemplate a constructive residence, but an actual residence.

The evidence clearly shows, nor is it denied by contestant, that he,

with other Mormons, when driven from Nauvoo, in Illinois, shook the dust of American soil from off their feet, and in the year 1847 sought refuge in a foreign Government and settled under the protection of the Mexican flag and Mexican laws, and for a time became subjects of that Government; but the fortunes of war soon afterwards gave that territory to the United States, and by treaty, ratified in 1848, was ceded to the United States by Mexico. Contestant in 1849 left this country and became a resident of the Sandwich Islands, and so remained a resident until 1854, when he, as the evidence shows, returned to Salt Lake City, in the Territory of Utah, on the 28th day of November, 1854, and on the 7th day of December, 1854, ten days after his arrival, was naturalized, as his certificate purports, not by a proceeding in court, but by a proceeding before a clerk; and when these acts, so persistently done and continued from time to time, indicating a determination to cut loose from all allegiance to this Government, gives emphasis to the evidence adduced tending to show that his pretended certificate of naturalization was and is fraudulent and void; and that not having resided in the United States three years next preceding his application to become a citizen, the court was without jurisdiction, and even if he had appeared in open court, and in all respects complied with the requirements of the statute, his naturalization under such circumstances would have been illegal and void.

My conclusions are that G. Q. Cannon is not entitled to a seat in Congress as a Delegate from the Territory of Utah, but that Allen G. Campbell is entitled to such seat, and report for adoption the following resolutions:

Resolved, That G. Q. Cannon is not entitled to a seat in the Forty-seventh Congress of the United States as a Delegate from the Territory of Utah.

Resolved, That Allen G. Campbell is entitled to a seat in the Forty-seventh Congress of the United States as a Delegate from the Territory of Utah.

WM. G. THOMPSON.

VIEWS OF MR. PETTIBONE.

This case is emphatically *sui generis*. It stands alone among contested election cases. Giving to it the best thought of which I have been capable, I give my conclusions as briefly as possible.

Presuming that for George Q. Cannon and Allen G. Campbell, as individuals, the committee have no fear, favor, prejudice, or affection, it is apparent that the case hinges on a few questions which may be tersely stated:

The prima facie case.

I. As to whether the certificate of Mr. Campbell entitles him *prima facie* to a seat. Despite all that has been or may be said, it appears to me that this certificate standing alone, and just as it reads, is plainly sufficient; and that the words "being a citizen of the United States over the age of twenty-one years," which are regarded as vitiating it, might and should be regarded as mere surplusage, if we were alone considering the *prima facie* case, and without regard to the very right involved in the contest.

II. But the certificate does not stand alone. We cannot shut our

eyes to the fact that long before this certificate was issued, under date of the 8th day of January, 1881, the contestee, Mr. Campbell, filed a protest, under date of December 12, 1880, with the governor, Eli H. Murray, protesting against his counting any votes for the contestant, George Q. Cannon; and that the governor, in rendering his decision upon this protest, unequivocally states that "the *returns* showed that at the election George Q. Cannon received 18,568 votes and Allen G. Campbell received 1,357 votes." This we find on the first page of the testimony and papers in the case.

And we also know from the governor's words that he gave the certificate to Mr. Campbell, because, quoting his exact language, "it having been shown that Mr. Cannon is not a citizen, and that he is incapable of becoming a citizen, I cannot under the law certify that he is duly elected, and that Mr. Campbell having received the greatest number of votes cast for any *citizen* was therefore duly elected and must receive the certificate accordingly." (Record, page 18.)

If the English doctrine as it has been applied and enforced in the British Parliament prevailed in the American Congress, viz, "that where the majority candidate is ineligible, and sufficient *notice* of his ineligibility has been given, the person receiving the next highest number of votes, being eligible, must be declared elected, the governor's position would be unassailable, provided it is true that Mr. Cannon never was naturalized and sufficient notice of the fact had been given.

But the English rule does not prevail in America. In the case of *Smith vs. Brown*, 2 Bartlett, 395, in the report submitted by Mr. Dawes, then chairman of the Committee on Elections, it is declared—

That the law of the British Parliament in this particular has *never* been adopted in this country, and is wholly inapplicable to the system of government under which we live.

And Judge McCrary, in his work on contested elections, in words as perspicuous as they are terse, sums up the matter thus:

It is a fundamental idea with us that the majority shall rule, and that a majority or at least a plurality *shall be required to elect a person to office by popular vote*.

An election with us is the deliberate choice of a majority or plurality of the electors. Any doctrine which opens the way for minority rule in *any case* is anti-republican and anti-American. (McCravy, § 234.)

Authorities might be multiplied, but they are unnecessary and superfluous.

But it is contended that there is no *testimony* before the committee showing that Mr. Cannon received a majority of the votes cast at the election.

I agree that the governor's statement outside his certificate to Mr. Campbell would not alone show that Mr. Cannon received a vast majority of the votes cast. I quite agree with the affirmation that a good judgment is not rendered invalid because the judge may offer unsound reasons for having rendered it.

But this leads to the question whether or not there is testimony given in evidence by Mr. Cannon in support of his claim to have received the great majority of the votes cast at the election. I mean legal votes, of course.

And right here it is well to consider the law by which the *returns* of which Governor Murray speaks came to his hands.

By § 22 of the compiled laws of Utah it is provided—

At the close of the election the judge shall seal up the ballot-box and the list of the names of the electors and transmit the same without delay to the county clerk.

And § 22 provides—

Immediately upon receiving the electoral returns of any precinct the county clerk and probate judge, or, in his absence, one of the selectmen, shall unseal the list and ballot-box, and count and compare the votes with the names on the list, and make a brief abstract of the offices and names voted for and the number of votes each person received; the ballot-box shall then be returned and the votes and list preserved for reference in case the election of any person shall be contested.

Section 24 enacts—

When all the returns and abstracts are made, the clerk shall forthwith make a general abstract and post it up in his office, and forward to the secretary of the Territory a certified copy of the names of the persons voted for, and the number of votes each has received for Territorial offices, and furnish each person having the highest number of votes for county and precinct offices a certificate of his election.

And by section 25 it is enacted—

So soon as all the returns are received the secretary, *in the presence of the governor*, shall unseal and examine them, and furnish to each person having the highest number of votes for any *Territorial* office a certificate of his election.

Under the provisions of these above-quoted sections the election for Delegate was held in Utah, yet held on a day distinct and set apart from any other election than that of a Delegate, that is, on November 2, 1880.

An analysis shows that the votes and list, sealed up, are in each county conveyed to the office of the county clerk, and by him and the probate judge, or a selectman, counted and compared, and a brief abstract is made of the result. When all the returns and abstracts from the various polls are made, a general abstract of the entire vote of the county is forthwith made and posted up in the clerk's office, and a certified copy is sent to the secretary of the Territory. When he has thus received these returns in abstract from each county they are opened and examined in the presence of the governor. The various lists of voters and votes of the different precincts are deposited with the county clerks of the respective counties, but the consolidated abstract of the vote of each county is, and this alone, forwarded to the secretary.

Now, it was these abstracts of the votes of each county called "returns" which were opened and examined in the governor's presence. It is not pretended he ever saw any other. These abstracts, made in strict conformity to statutory law, were the "returns" on which Governor Murray gave to Mr. Campbell his certificate, as we find it at the bottom of page 19 of the record evidence.

It is the certified "summary" of these returns which constitute what is called Mr. Cannon's credentials on page 20 of the record.

And it conclusively appears from the notice of contest that Mr. Cannon professed to furnish with his notice copies of every one of these "returns," marked, respectively, A, B, C, D, &c., down to Exhibit V. And Mr. Campbell *solemnly admits*, in his answer to the notice of contest, that he received them. His language is:

I admit that returns of the election of Delegate to the Forty-seventh Congress held on the 2d day of November, 1880, in the several counties of the Territory of Utah, were made to the secretary of said Territory, *of which copies are annexed to your notice and referred to therein as marked respectively A, B, C, D, &c.*

Mr. Campbell solemnly admitted that he received a copy of each county return at the very beginning of the contest. He admits these copies are just what is printed in the testimony, viz, Exhibits A, B, C, D, &c., to Mr. Cannon's notice of contest.

That record evidence is admissible he does not deny, but insists that these admitted copies of the county returns cannot be looked to, because

they were too speedily thrust into his hands. And we are cited to section 362 of Judge McCrary's Law of Elections. McCrary employs this language:

The question may be raised whether evidence of this character can be offered for the first time on trial.

And in answer to this question he adds:

It may be said that it should be produced before an officer taking testimony, in the presence of the opposite party, and put in evidence within the time required for completing the taking of testimony in the case.

And, he adds, this is undoubtedly the correct practice.

But *why* is it the correct practice; what is the reason? Judge McCrary answers this: "For if evidence of this character is to be used it is but fair that the party against whom it was offered *should have notice of it in time to offer evidence in response to it.*"

And here is the meat of the whole matter. For even if this dictum of Judge McCrary were statute law, as it is not, yet since the object of the rule, if it be a rule of law, is *that the opposite party may have notice*, the case seems to furnish the strongest possible example of the rule that "the reason of the law utterly failing the law itself fails." And Judge McCrary, on this very topic, in section 353, says: "The House of Representatives has shown a disposition to give a liberal construction to the acts of Congress in relation to the mode of conducting contested elections. They are constructed with reference more to the substantial rights of the parties than to the exact wording of the statute." It is evident that contestee relies on *the exact wording of the statute* alone when he urges that contestant has no evidence before us.

It is not pretended that these copies are false copies. It is not pretended that the contestee did not expect them to be before us, for they were attached to and made exhibits to the notice of contest which was duly served upon him and which he knew we would have here. He cannot deny that *he had notice* of these exhibits, for he refers to them, admits their reception, but denies their effect to be as claimed by contestant in the answer which he, the contestee, prepared, signed, and filed.

I conclude, therefore, that there is testimony before the committee that Mr. Cannon received a majority of the votes cast at the election, and none that he did not. Whether Mr. Cannon is eligible or not, I must decide against the claim of Mr. Campbell, both on his *prima facie* case and on the merits of his claim to a seat as the duly elected Delegate from Utah.

III. This brings us to the question of Mr. Cannon's eligibility.

And, first, is he a naturalized citizen?

It is needless to sum up here the authorities bearing on this question. Suffice it to say that going over all the cases cited on either side, and hunting the books which treat of the subject of naturalization, I am constrained to say that Mr. Cannon's claim to have been naturalized seems to me *res adjudicata*.

Whether a Mormon, in view of what it is notorious his church teaches and claims and practices, can be "attached to the principles of the Constitution of the United States, and well disposed to the good order of its inhabitants" or not—however this may be, cannot affect Mr. Cannon's citizenship to-day and now, when once it is conceded that he was naturalized, as his certificate shows, in 1854.

And now the question remains, since it is evident that at the election Mr. Cannon received a vast majority of the votes cast, and, though claim-

ing that thousands of illegal votes were thrown for him, the contestee still does not claim that throwing them out would leave a majority for the contestee, why is Mr. Cannon not entitled to his seat; or, in other words, why should he not be welcomed to his seat as the Territorial Delegate from Utah as he has been heretofore? For it must be conceded that he has the qualifications which Article II of the Constitution prescribes as the only ones which are necessary in the case of a Representative in Congress; that is, age, citizenship, and inhabitancy. He is over 25 years of age; he is a naturalized citizen, and he has for a score of years and more been an inhabitant of Utah. Judge Story, in his concise but luminous comment on this article of the Constitution, says:

It would seem but fair reasoning, upon the plainest principles of interpretation, that when the Constitution established certain qualifications as necessary for office, it meant to exclude all others as prerequisites. From the very nature of such a provision the affirmation of these qualifications (*i. e.*, proper age, citizenship, and inhabitancy) would seem to imply a negative to all others. (Story on the Constitution, section 624.)

And this is but applying to this clause of the Constitution the maxim of interpretation *expressio unius est exclusio alterius*. The express mention of one thing implies the exclusion of another.

If, then, a Delegate from a Territory stands on the same footing as a member of Congress, Mr. Cannon must be admitted to his seat. But the Delegate does not. He is in no just sense a *member* of the House.

"The House of Representatives shall be composed of *members* chosen every second year by the people of the several *States*." (United States Constitution.)

He is, in the language of section 13 of the organic act of Utah Territory, "a *Delegate* to the House of Representatives of the United States."

We have only to consider the history and unbroken practice of legislation for the Territories since the formation of the Government to see the Utah case in its true light.

Commenting on the provision of the Constitution, that "Congress shall have power to dispose of and make all useful rules and regulations respecting the Territory or other property of the United States," Judge Marshall, in the *American Insurance Company vs. Conter*, 1 Peters, 511, declares: "In legislation for the Territories Congress exercises the combined powers of the general and of a *State government*."

And Judge Cooley, in his "Principles of Constitutional Law," uses these words:

The people of the Territory, except as Congress shall provide therefor, are not of right entitled to participate in political authority until the Territory becomes a State.

Is it, then, insisted that their *Delegate*—who has a seat and a right to debate only, but is debarred from any exercise of law-making power, who, in the case of Utah, need be but *twenty-one* years of age, while a member must be *twenty-five*—can of right *demand* that he shall stand on the same constitutional footing as a Member, and that Congress may not inquire as to his fitness to be a *Delegate*, except to ascertain if he has received a majority of the votes cast, is twenty-one years of age, is naturalized, and an inhabitant of Utah? This, I understand, is the contestant's position and claim.

Why cannot Congress inquire as to a member's qualifications further than to ascertain if he be past twenty-five years of age, a citizen of the United States for seven years, and an inhabitant of the State from whence he comes? Because the Constitution lays these down as the sole positive qualifications, and the expression of the one thing is the exclusion of the other. But no such restriction is laid on the power of

Congress over the Delegate. The Constitution never contemplated the presence on the floor of the House, *as an integral part of the House*, of a Delegate from a Territory. For one, I do not believe that the clause of the Constitution, "each House shall be the judge of the elections, returns, and qualifications of its own members," has anything to do with a contested election of a *Delegate* from a Territory, except so far as analogies of practice go. But these analogies do not, and cannot, have the force of law. They cannot confer on the Delegate the privileges or the immunities which the Representative has conferred on him by the Constitution. In judging whether Mr. George Q. Cannon is entitled to a seat we are not judging of the election or qualification of a *member*, for he is *not* a member-elect.

It may seem trivial to discuss this, but it seems to me the vital point in the case.

The Delegate from a Territory is here *ex gratia*, by the grace and favor of Congress to the people of the Territory, that they may have an agent at the seat of sovereign power to look after and advocate their interests, but as a mere advocate, not as a member of the court.

The *Congress* shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property of the United States.

And the Delegate from a Territory is not in any sense a *member* of Congress, he is not a Representative in Congress, he is a creation of Congress.

Now, as we all well know, Congress, by the act of July 1, 1862, carried into the Revised Statutes in § 5352, solemnly enacted that—

Every person having a husband or wife living who marries another, whether married or single, in a Territory or other place over which the United States has exclusive jurisdiction, is guilty of *bigamy*, and *shall be punished* by a fine of not more than \$500 and imprisoned for a term not more than five years.

While it cannot be truthfully said that this law is in force in Utah it *is* in force in every other Territory, and has never been repealed.

Contestant George Q. Cannon says:

I do admit that (in accordance with the tenets of his church) I have taken plural wives, who *now* live with me and have so lived with me for a number of years and borne me children. (Record, page 60.)

And this undoubted, solemnly self-admitted bigamist, this despiser and contemner of the laws of Congress, to-day and now demands a seat on the floor of the House of Representatives, and demands to be paid \$5,000 per year for occupying such seat, by the Government whose laws he tramples under foot and teaches others to do the same, as he frankly admits. For one, I cannot support the Constitution, and yet supinely sanction the utter defiance and abrogation of a law of Congress declared to be constitutional. (Reynolds vs. United States, 8 Otto, 145.)

Every legislative body must, in the nature of things, have the power to preserve its own order, decorum, and dignity.

This demand on the part of Mr. Cannon, one who makes no dissimulation, but who admits in the face of the world that he lives in open violation of the laws of Congress, to a seat on the floor of the House is an insult to the dignity of the House. He is unworthy of a seat. By my vote he shall never be welcomed to a seat in the House.

This case should be sent back to the people of Utah with a stern admonition that no person shall ever be seated as a Delegate in this House who violates the law and offends as George Q. Cannon has offended, and still does offend, by his own solemn confession.

One more observation and I am done.

It is with us a fundamental idea that the majority shall rule. This idea everywhere prevails in practice, unless it is in rare instances curbed by constitutional inhibition.

In section 5 of Article I of the Constitution, in clause 2, it is declared that "each House may determine the rules of its proceedings (and) punish its members for disorderly conduct." So far there is no doubt or question that the majority principle is applicable as applied to this clause. It ever has been and still is so construed. But the concluding words are, "and, with the concurrence of two-thirds, expel a member."

Here is a strong restraint laid on the majority principle. It was imported into the text of the Constitution, we know, on the motion of Mr. Madison. But an excepting clause in any legal instrument is strictly confined to the excepted matter, and this is but another way of saying the express affirmation of one thing is an exclusion of another. This is sound law and sound sense. The exception to the doctrine, everywhere universal among us, is that a member of Congress, a necessary part of the organic whole, shall not be expelled without the concurrence of two-thirds of all the members. But this exception, by the very words of the Constitution, applies only to *members*—to Representatives from the States. It is against every principle of sound construction to apply it to the creature of Congress; to throw it over him as a protecting ægis to save him from just responsibility for violating the laws of Congress when it was designed for, and by its very words is confined to, the case of the member of Congress.

I have said this is a novel case. The nearest approach to it, and it is vastly weaker, that I have been able to find is that of Jeremiah Learned, in the Massachusetts house of representatives in 1875. Because he had been *indicted* for seditiously and riotously opposing the collection of public taxes, by resolution his right to hold a seat was suspended. Pending his trial upon that indictment the dignity of that house would not permit his presence, and yet he was a *member-elect and not a delegate to it* from an outside constituency.

My voice and vote, then, is for a resolution denying to George Q. Cannon a seat as a Delegate from Utah, because it is in gross violation of the dignity of the House, and would be an insult to the sovereignty of the nation to admit a self-admitted criminal violator of the laws of Congress to a seat in the body whereof we are members.

VIEWS OF MR. MILLER.

I submit the following as governing and controlling my action as a member of the Committee on Elections, relative to the pending contest of Cannon *vs.* Campbell for the right to represent the Territory of Utah in the Forty-seventh Congress. At the outstart I concede that George Q. Cannon was, at the date of the election in November, 1880, a naturalized citizen of the United States. The certificate of naturalization exhibited by him is in due form, purports to be issued by a court of competent jurisdiction, and is signed and sealed by the court issuing it. The adjudication of this question has never been opened or reversed by any judicial tribunal having constitutional and legal authority to open and reverse it.

I concede, further, that it conclusively appears in evidence that George Q. Cannon, who was a candidate for election as Delegate to the Forty-seventh Congress for the Territory of Utah, did, at the November elec-

tion in 1880, receive a majority of all the votes cast in said Territory, and that he was duly and legally elected a Delegate and entitled to a seat in said Congress, unless he is disqualified from holding a seat for some cause cognizable by Congress.

Section 5, Article I of the Constitution of the United States is as follows:

Each House shall be the judge of the elections, returns, and qualifications of its own members. * * *

The sole question for consideration, to my mind, is presented by the inquiry:

Is George Q. Cannon for any reason disqualified to sit as a Delegate in Congress to represent the Territory of Utah, and is that disqualification of such a character as to justify Congress in refusing him a seat in the House under the provisions of the Constitution?

The evidence discloses the fact that George Q. Cannon is a polygamist, and that he not only believes in but practices the doctrines, tenets, and mandates of Mormonism. On page 60 of the evidence in this case is the following admission:

I, George Q. Cannon, contestant, protesting that the matter in this paper contained is not relevant to the issue, do admit that I am a member of the Church of Jesus Christ of Latter-day Saints, commonly called Mormons; that, in accordance with the tenets of said church, I have taken plural wives, who now live with me, and have so lived with me for a number of years and borne me children. I also admit that in my public addresses as a teacher of my religion in Utah Territory I have defended said tenet of said church as being, in my belief, a revelation from God.

GEORGE Q. CANNON.

This is an adjudication of the charge that he is a polygamist. It was one of the reasons alleged by Mr. Campbell, the contestee, which in his opinion rendered Mr. Cannon ineligible to the office of Delegate in the House of Representatives. It was a proper subject-matter of proof, and Mr. Cannon waived the proof by his admission, which was as broad as the charge.

As long ago as July 1, 1862 (section 5352 of the Revised Statutes), Congress enacted that:

Every person having a husband or wife living who marries another, whether married or single, in a Territory or other place over which the United States has exclusive jurisdiction, is guilty of *bigamy*, and shall be punished by a fine of not more than \$500 and imprisoned for a term not more than five years.

Under his own hand, and without any objection or reservation, Mr. Cannon admits that he is living in open violation of this statute, and that he openly defies this edict of the two Houses of Congress, approved by the President, and declared constitutional and valid by the Supreme Court of the United States in the case of *Reynolds vs. United States*, 8 Otto, 145.

In addition to this statute, and the decision of the court as to its constitutionality, that polygamy is a crime, we have the judgment of some of the wisest and ablest statesmen and jurists of this country that its teachings and practices are fatal to republican government and to the constitutional, civil, and religious liberties that the Government of the United States was designed to protect. In a recent debate in the United States Senate on the authority and power of Congress to enact a law—

That no polygamist, bigamist, or any person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as aforesaid in this section, in any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election held in any such Territory or other place, or be eligible for election or appointment to, or be entitled to hold any office or

place of public trust, honor, or emolument in, under, or for any such Territory or place, or under the United States—

Senator Garland, of Arkansas, said:

Both these Senators (Mr. Call and Mr. Vest) have said that the provisions of section 7 and section 8 are severe provisions. They were intended to be severe. They have been said to be rough provisions. They were intended to be rough. Desperate cases need desperate remedies, and I am of the opinion that every provision in this bill is as well sanctioned by the organic law and precedents under the organic law of this country as any bill that has ever received the sanction of Congress.

The proposition reported rests on the basis that the Territory of Utah needs some new law; the Territory of Utah is not properly governed according to the opinions of many persons; and I have in my hand reports on that subject running back for fifteen years submitted in the two Houses of Congress, and without a dissenting voice it is the general judgment that there is something wrong in that Territory; that there is something there that defies the laws of this country; that there is something there that sets at naught mandates and edicts (if I may use that expression) of the two Houses of Congress, approved and sanctioned by the President of the United States.

On the same subject, Senator Bayard, of Delaware, said :

In this case I do not propose to add anything further to what has been said, and well said, by my friend from Arkansas [Mr. Garland], because I had in some degree indicated the same line of opinion. I had stated, and I here reiterate, that there is nothing of the reality of a republican form of government in the Territory of Utah. It is a maleficent and malevolent union of church and state; it is a theocratic government higher than the Constitution of the United States in the estimation of its votaries, and which compels an obedience that is hostile to the spirit of liberty and spirit of law and the American laws and constitutions themselves.

Now, the question is, in a republican Congress, under a Constitution expressly guaranteeing to the States a republican form of government, and which is intended in all its departments to be in the form and to breathe the spirit of a republican government, can you say that it is not a needful rule and regulation by Congress to enact such laws as shall bring to an end a doctrine so fatal to republican government and to the constitutional, civil, and religious liberties that that government was designed to protect?

On the same subject Senator Edmunds, of Vermont, said :

The government of the Territory of Utah in every one of its practical, administrative, and political aspects is a government of polygamists—not a government of faith or opinion, but a government of fact. The men who practice that thing are in possession of that government; they are in possession of it in defiance of the statutes of the United States punishing that thing; they are in possession of it in defiance of all civilized, Christian, modern understanding of what it is right to do, not what it is right to think.

* * * * *

No man, North or South, who believes in the Christian religion, who believes in a republican government, can maintain or has maintained in this body that this institution of polygamy is one that can exist consistently with our universal idea of the true theory of a republican government. Nobody has pretended such a thing.

* * * * *

The Committee on the Judiciary recognize to the fullest extent all that has been said touching the right of every man and every woman to believe precisely what he or she likes. He may be an infidel and believe in nothing; he may be of any sect; he may believe that a hundred wives or no wives are right; he may believe in horse-stealing or whatever he likes. So long as he believes merely he has a right to his opinion; but when it comes to what he has to do in the government of the country it is a different thing.

* * * * *

More than that and beyond that, it is not the mere practice of polygamy, bad as it is, but that happens to be an inherent and controlling force in the most intense and anti-republican hierarchy, theocracy, as an organized and systematic government that, so far as my small reading has gone, has ever existed on the face of the earth. The Church of Latter-day Saints, a corporation organized under the authority of law, controls in every respect every step in the Territorial operations of that community. The three presidents by step after step, the three first presidents, as they are called, but I believe that the last one of those is the absolute ruler in point of fact—you may disguise it and gloss it as you please—of the destiny and the fate of that people, polygamists, Mormons who are not polygamists, and Gentiles. Is that republican? Can

you tolerate in the heart of this continent of republics the building up of a State of that character?

From the views of such able jurists and statesmen we may safely conclude that the opinions and practices admittedly held, believed in, practiced, and taught by Mr. Cannon are totally at variance with and hostile to the spirit of liberty, the letter of the laws, and the spirit and letter of the Constitution of the United States, and that such belief, such teachings, and such practices disqualify him to set as a Delegate in the House of Representatives.

Is it, then, such a disqualification as comes within the provisions of section 5, Article I of the Constitution?

Webster defines "quality" to make fit, suitable, or competent for anything; and "qualification" that which qualifies or fits any person or thing for any use or purpose, as an office, an employment; capability, fitness, accomplishment.

Mr. Cannon lives in open defiance to the statutes of the United States; in defiance of all civilized, Christian, modern understanding of what is right to practice; he preaches, teaches, and practices tenets and upholds and obeys the edicts of an institution that sets the laws of the Government at defiance, that is fatal to republican institutions and so baneful in its teachings that unless overthrown will sap the very foundations of the citadel of our liberties. Is such a man a "fit" man to be admitted to the House of Representatives? Is he a "suitable" man to admit to a seat in Congress? Does he possess those requisites which qualify him to hold an office in the legislative branch of the Government?

But it is contended that the only inquiry Congress can make as to the "qualifications" of any one seeking admission as a Delegate or Member to Congress is confined to those mentioned in section 2 of article I of the Constitution, viz, age, citizenship, and residence in the State in which he shall be chosen; and that inasmuch as the Constitution is silent on all other qualifications the inquiry is necessarily limited to these alone. In support of this theory its advocates cite the opinion of Judge Story and other eminent jurists, and a long line of precedents, chiefly valuable on account of their age and uniformity. These decisions and precedents, however, are not binding on Congress; they are only persuasive.

The power of Congress to decide for itself in all matters within its scope and authority is as absolute and unlimited as that of the Supreme Court of the United States in its proper sphere, and it has the same constitutional right and prerogative to reverse the decisions of former Congresses and to decide in the face of precedents and opinions, no matter how ancient or judicial the source, as has the Supreme Court to reverse former decisions and ignore the opinions and decisions of other courts. And whenever a wrong is to be righted; whenever injustice is to be uprooted; whenever barbarism, or anarchy, or treason is to be halted in its attack on the citadel of our liberties; whenever an institution or government—political or religious—with the geographical limits of this Government, be it State or Territorial, defies the laws of the land, sets at naught the mandates and edicts of the two Houses of Congress; sets up a theocratic government higher than the Constitution of the United States in the estimation of its votaries, and compels an obedience that is hostile to the spirit of liberty and the spirit and letter of our laws; establishes a government founded upon a system which cannot exist consistently with the universal idea of the true theory of a republican government; that under the forms of law and under the shield of a so-called religion deputizes one man as the absolute ruler in point of

fact of the destiny and the fate of 120,000 people—polygamists, Mormons who are anti-polygamists, and Gentiles—whenever such a hydra-headed monster of injustice, iniquity, and anti-republicanism shall threaten the peace of this nation, it is quite time that Congress should assert its prerogatives, should trample down ancient precedents if they stand in its way, should disregard the opinions of any man, no matter how reputable, if they are quoted ever so persuasive, and call a halt on the enemy of free government.

The exercise of such power is not the exercise of "brute force," as some have denominated the majority action of this committee; it is the exercise of that right which is as inherent in governments as in citizens, the right of self-defense, of self-preservation—the right and authority and duty of governments to protect their existence from all enemies, domestic as well as foreign.

In doing this you may run counter of a precedent or decision or opinion that once was highly esteemed; so much the worse for the precedent. The naked, rugged issue is presented to this House: Shall a man who lives in open, boastful adultery, a crime proscribed by the laws of God and man, but canonized by the people he seeks to represent, practiced and taught as a religious duty by 28 out of 36 members of the legislature who demand his admission; who admits that he is a member of the church of Latter-day Saints, with all that such an admission imports—its open hostility to our laws, its anti-republicanism, its maleficent and malevolent union of church and state—shall such a man be admitted to a seat in Congress? Is he eligible to the office of Delegate in the House of Representatives? We think not; and we therefore join with the majority and ask that the report of the majority of this committee be adopted by the House.

MR. JACOBS' VIEWS ON THE PRIMA FACIE CASE.

This contest may be resolved into the following propositions:

First. Is the governor's certificate such a muniment of title as confers the seat *prima facie* upon the contestant? McCrary, sec. 208, declares that "It is enough for a *prima facie* case if the certificate comes from the proper officer of the State, and clearly shows that the person claiming under it has been adjudged to be duly elected," &c. It is made conclusive of the *prima facie* title of the contestee, because it is a record. To be a record it must import absolute verity. It derives its authority from a single fact, and that fact is that the holder of the certificate received the highest number of votes. That fact may be omitted and the certificate still be valid. But when, in addition to that fact, the certifying officer couples with it the statement of another fact not necessary or germane to his determination, and upon both facts argumentatively (therefore) concludes that contestee was "duly elected," the document fails to import absolute verity, excites doubt, challenges controversy, and opens the door to investigation.

Second. The contestee having failed to make a *prima facie* title to the seat, and he being the only person bearing the certificate of the only officer competent for that purpose, it would seem to follow that the only remaining question is which of these two persons having the qualifications prescribed by the Constitution received the greatest number of votes at the election?

And here, at the threshold, it is objected that the contestant has failed

to make any proof of the allegation, in his notice of contest contained, that he received the highest number of votes at such election within the time prescribed by law.

To which it may be replied that the notice of contest proceeded upon the assumption that the certificate of the governor conferred upon the contestee a *prima facie* title to the seat.

But if I am right in my first conclusion, and the contestee has, by reason of his certificate, no valid title whatever, then how can the burden of proof in the first instance be said to be upon the person who has named himself as the contestant? Both being destitute of a *prima facie* title, how do the parties differ so far as determining which has the affirmative in the contest.

But if the form the contest has taken is to be deemed to determine that, then we are brought to the question, Is the admission contained on page 32 of the Record sufficient to put the contestee to proof of the affirmative allegations of his answer. At all events the contestee seems to have so regarded it, when, upon notice to the contestant, he produced and examined witnesses before the notary to establish the alienage and polygamy of the contestant.

For this and other reasons stated by counsel upon the argument, and which it would be idle to recapitulate, I hold that the contestee held the affirmative in the introduction of proof before the notary; and not having asked to be relieved from his default, we are brought to the inquiry, Was the contestant at the time of his election an alien? Upon this question I adopt the reasoning of the chairman, and hold that the judgment of naturalization cannot be attacked collaterally, and in conclusion, constrained as I am by my views of the principles of construction to hold that George Q. Cannon was, at the time of the election, a citizen of the United States, and received the greatest number of the votes cast, I am, nevertheless, of the opinion that this committee should recommend and the House ought to refuse to admit the said Cannon to a seat as a Delegate from the Territory of Utah, for the reason that, in defiance of the laws of Congress and the sense of mankind, he is living in open adultery with plural wives, and advocating the doctrines and practice of polygamy.

And so, seeking the shelter of no subterfuge or technicality, I stand on this proposition for the dignity and honor of the House.

VIEWS OF MR. BELTZHOOVER.

In the matter of the election contest of George Q. Cannon against Allen G. Campbell. Territory of Utah.

HISTORY OF THE CASE.

This important contest is fortunately free from all partisan considerations, and will, therefore, be determined upon its merits and the plain principles of right. The election out of which it arises was held on November 2, 1880, for the choice of a Delegate from the Territory of Utah. The returns, which were duly filed with the secretary of the Territory, were opened and canvassed by him in the presence of the governor of the Territory, on December 14, 1880. The canvass of the votes, which was concluded on January 8, 1881, showed that George Q. Cannon received 18,568 votes, and Allen G. Campbell received 1,357 votes. The

law provides that the person having the highest number of votes shall be declared by the governor to be elected. The governor, however, in the mistaken belief that he had the right to go behind the returns, heard evidence and arguments to show that Mr. Cannon was an alien and polygamist, and on these grounds finding them, as he believed, sustained, declared Mr. Cannon ineligible and disqualified to serve as a Delegate. The governor further decided, under an erroneous view of the law, that Mr. Cannon being ineligible, the votes cast for him were void, and Mr. Campbell being a citizen and eligible, and having received the next highest number of votes, was elected. The governor accordingly gave Mr. Campbell a certificate of election, and filed among the records of the Territory, in the office of the secretary thereof, an elaborate opinion containing a full statement of the facts. The secretary of the Territory, on January 10, 1881, gave Mr. Cannon a certified copy of the opinion and declaration of the governor, and also, on January 20, 1881, gave him a certified abstract of all the returns.

Mr. Cannon notified Mr. Campbell, on February 4, 1881, that he would contest his seat on the ground that he, Cannon, had received a large majority of the votes cast. On February 24, 1881, Mr. Campbell replied to Mr. Cannon's notice that he was not elected, and, if elected, was disqualified by reason of his alienage and polygamy. No testimony was taken by Mr. Cannon in support of his notice during the time allowed to him by law, but on May 9, 1881, and subsequently thereto, testimony was taken by Mr. Campbell to show that Mr. Cannon was a polygamist and an unnaturalized alien, and by Mr. Cannon, in reply, to show his citizenship.

The certificates held by Mr. Cannon and Mr. Campbell and all the papers and testimony in the case were placed in the custody of the Clerk of the Forty-sixth Congress, and by him were handed over to his successor at the organization of the Forty-seventh Congress.

When the Forty-seventh Congress was organized and the Delegates from the Territories were called to be sworn, objection was made to both Mr. Campbell and Mr. Cannon, and neither was admitted. After a full discussion of the question as to which of the two gentlemen had the *prima facie* right to the seat, it was resolved by the House, on January 13, 1882—

That the papers in relation to the right to a seat, as a Delegate from the Territory of Utah, be referred to the Committee on Elections, with instructions to report, at as early a day as practicable, as to the *prima facie* right or the final right of the claimants to the seat, as the committee shall deem proper.

This resolution clearly made the case a special one and took it out of the regular order under which cases go to the Committee on Elections under the law and the standing rule of the House. Both the *prima facie* and final rights were argued by the parties before the committee, but it would not be proper to prolong the contest by dividing and reporting on the *prima facie* title, when the committee are ready to pass upon the final right and thereby dispose of the case.

WERE THE CERTIFIED RETURNS EVIDENCE?

The first question which was presented for the determination of the committee was: Are the certified copies of the returns of the election from all the counties in the Territory evidence?

During the thirty days allowed Mr. Cannon under the law for taking testimony in support of his notice of contest he declined to take any testimony, but attached to his notice copies of all the returns of election

from all the counties in the Territory filed in the office of the secretary of the Territory, under the seal of said office. He also, subsequently, after the time had expired for taking testimony by him in chief, filed with the Clerk of the House certified copies of the same returns, and they are now printed in the Record and are before the committee as part of the papers in the case.

The counsel for Mr. Campbell, the contestee, objected to these copies and stopped on the threshold of the argument before the committee, and asked to have the contest dismissed for the reason that Mr. Cannon had not offered any competent testimony to sustain his case. I am of the opinion that these certified copies are evidence, for several reasons.

First. The returns are made to and filed with the secretary of the Territory, in conformity to law, and as a part of the records of his office. They are compiled by the clerks of the several counties from the precinct returns, and are sent to the secretary of the Territory under the provisions of a well guarded election law. They are, therefore, records of the secretary's office, upon which the important rights of the people to representation depend, and can be certified for the purposes of evidence as any other record.

Second. The election was held, the canvass was made, the result declared, and the certificates issued, under sections 21 and 22 of the Territorial act of 1878, and section 1862 of the Revised Statutes of the United States. This is very clearly recognized by the governor all through his opinion and in the certificate which he issued to Mr. Campbell. This being so, the governor had only the right to declare who was elected, and the secretary had the right to certify the declaration. The certificate of the governor was, therefore, without authority of law. The certificate of the secretary of the Territory, which gives the whole declaration of the result by the governor when the returns were opened and canvassed in his presence by said secretary, is the legal certificate. This certificate clearly gives Mr. Cannon the *prima facie* right to the seat, and the copies of the returns, which were filed at the same time with the certificate, corroborate that right. They are a part of the title, which for the further consideration of the case is good enough without them until it is assailed by testimony going to the legality and number of the votes cast. No such testimony was given.

WHO WAS ELECTED ?

This brings us to the consideration of the second inquiry : Who was elected and returned by the people ?

This question I will not take time to discuss. I am satisfied clearly and beyond all doubt that Mr. Cannon received a very large majority of the votes cast in conformity to the laws of the Territory, and was duly elected and returned. I desire to emphasize this point for the reason that I will not consent that the questions of election and return shall ever be determined by anything but the honest majority of votes cast. I do not believe that anything but votes can elect, and that the permanence of representative government depends more upon faithfully observing and respecting this principle than anything else. This disposes of the claim of Mr. Campbell that he was elected and returned, although he only received a small minority of the votes cast. The doctrine that when the majority candidate is ineligible or disqualified, the minority candidate, being qualified, is elected is utterly repudiated in almost all the States of this Union and by the uniform decisions of Con.

gress. Under no circumstances, therefore, has Mr. Campbell any claim or title to be seated in this contest.

IS MR. CANNON A CITIZEN?

Having concluded that Mr. Cannon was elected and returned, there remain the questions: First, is he disqualified because he is an alien; second, is he disqualified because he is an open and avowed polygamist?

I have given the subject of Mr. Cannon's citizenship careful examination, and have concluded that, under the decision of the Supreme Court of the United States in *Campbell vs. Gordon*, 6 Cranch, 176, the certificate of naturalization held by him is valid. It is in strict conformity of the spirit and policy of our Government to give a very liberal construction of the laws and regulations governing naturalizations. We are a nation whose progress and prosperity are largely built upon the emigration and absorption of the millions of people who have come and will continue to come to us from foreign lands. A learned judge has justly said:

If every naturalized citizen must always be prepared with his proofs to maintain the grounds upon which he obtained his papers in all courts and places in which they may be brought into question the boon of citizenship, which is so liberally bestowed, would be barely worth possessing.

WHAT IS POLYGAMY?

We come then to the great controlling question in the contest: Is Mr. Cannon disqualified to sit as a Delegate from the Territory of Utah because he is a polygamist?

What is polygamy? What are its characteristics, doctrines, and practices, and how does it affect its followers and adherents in their relations and loyalty to the Government?

We can give the most correct and compendious answers to these inquiries by quoting from the majority report of the Committee on Elections, made in the Fortieth Congress, in the contested election case of *McGrorty vs. Hooper*. The committee went into the subject elaborately and took testimony from every source which was within their reach. They say:

That by reason of polygamy in Utah great crimes have been committed and have been let go unwhipped of justice. Open violation of the authority of this Government has frequently occurred. The sanctity of the ermine has been profaned, the course of justice obstructed. Organized assassination has been frequently perpetrated.

The revelations of the seer have a higher authority than the laws of Congress. The sermons of the Mormon apostles have an edifying effect in Salt Lake City quite equal in the opinion of their followers to those of certain preachers in the cities of the East, and of more weight than a judicial decision. Intolerance, wrangling, violence, and polygamy have marred the administration of our laws in Utah, and have weakened the authority of the United States. Why?

Because the organic law of the Territory does not remedy the evils local and peculiar to Utah, thereby leaving the dominion and control of the Territory and its resources completely in the hands of the hierarchy of the Mormon society.

Because the monopoly of wealth and power in the Territory is to a great extent in the hands of the Mormon leaders, excluding competition from the so-called Gentiles, i. e., citizens of the United States not members of the Mormon society, the preference being by custom given to a Mormon whenever competition is likely to injure the Mormon interest.

Polygamy prevails in spite of express laws of the United States, in open outrage of every sacred family tie, controlling the social organization of the community, and shaming the sense of propriety so long and well established among all races of Europeans on this continent. No officer of the United States, civil or military, can hope

to exert any salutary influence over this society while polygamy is allowed in defiance of his authority and against the law of the Government he represents.

Polygamy must be abolished in all this Territory, or the power of this Government will be held in contempt by every class of inhabitants. Through its influence a social ban is put on all Christian women who remain true to the laws and customs of their country, and the precepts of their faith.

Isolated from all other influences than their own peculiar customs and prejudices, the Mormon population are not amenable to the arguments usually applied to enlighten or reform mankind. A revelation from the seer or a strong inducement to migrate seem the only easy remedies. Polygamy is synonymous with bigamy. Bigamy is, under our law, a crime, and polygamy is a monstrous bigamy. Under the Mormon organization it seems to threaten to become incest. The intermarriage of the leading families has made the usual definitions of fixing relationship very complex, if not impossible, under the laws of the United States.

To the Mormons such definitions of polygamy and its developments are perhaps harsh, but your committee use only the definitions established among and by the people of the United States by common law and common decency. The instances of incest among the Mormons are taken from the printed works on the customs of that society, and your committee refer to them for the reliability of the statement. There seems to your committee, however, abundant proof of the licentious practices under the law regulating marriages in Utah to call for vigorous enforcements of the existing law of Congress on the subject of polygamy. A conflict between monogamy and polygamy has been inaugurated in defiance of our laws by the Mormons themselves.

And this licentious custom of marriage or reckless abuse of that sacred rite is one of the most glaring and practical proofs of the aggressive and dangerous character of a system which grows at the will or in obedience to the lust of a political ruler styling himself a prophet.

Toleration of religious views is a holy duty enforced on Congress by the Constitution, but no law does or can exist which permits toleration of a practice hostile to the safety of society. Such a practice may be introduced by the best and highest human authority, but whether under the name of prophet, priest, or king it matters not so long as the practice introduced be against established law of the land or fatal to the welfare of the State.

There are other practices under the hierarchy of Utah which militates in the opinion of your committee against the principles of good republican government. But the origin of all these existing evils, and the certain source of innumerable future evils in Utah, is in the prophetic power of the head of the society which rules there. The union of church and State, the combined sanctity of the voice of God and the will of the people, arm the chosen ruler of that organization with spiritual and temporal power.

Has that power been hostile to the Government of the United States? Your committee believe that it is, and has been hostile rather from the inherent spirit of its creation than from any design on the part of that people.

* * * * *

The Secretary of War in his report of December, 1857, says:

"The Territory of Utah is peopled almost exclusively by the religious sect known as Mormons. They have substituted for the laws of the land a theocracy having for its head an individual whom they profess to believe a prophet of God. This prophet demands obedience, and receives it implicitly from his people, in virtue of what he assures them to be authority derived from revelations received by him from Heaven."

"Whenever he finds it convenient to exercise any special command, these opportune revelations of a higher law come to his aid. From his decrees there is no appeal; against his will there is no resistance."

"From the first hour they fixed themselves in that remote and almost inaccessible region of our territory from which they are now sending defiance to the sovereign power their whole plan has been to prepare for a successful secession from the authority of the United States and a permanent establishment of their own."

On the 13th of February, 1863, Senator Wade, in a report submitted to the Senate of the United States in reference to Utah affairs, used the following language:

"The customs which have prevailed in all our Territories in the government of public affairs have had but little toleration in the Territory of Utah; but in their stead there appears to be, overriding all other influences, a sort of Jewish theocracy, graduated to the condition of that Territory. This theocracy having a supreme head who governs and guides every affair of importance in the church, and practically in the Territory, is the only real power acknowledged here, and to the extension of whose interests every person in the Territory must directly or indirectly conduce. We have here the first exhibition, within the limits of the United States, of a church ruling the State." (Thirty-seventh Congress, third session, Rep. Com., No. 87.)

In January, 1866, certain resolutions were referred to the Committee on the Territories of the House of Representatives, instructing them to "inquire and ascertain what means, civil or military, might lawfully be resorted to to effectually eradicate the evil

of polygamy from the land, what legislation was needed for that purpose, and why the law against polygamy was not enforced"; also a resolution instructing the same committee to inquire into the expediency of reporting a bill providing for the repeal of the law organizing the Territory of Utah, and for dividing said Territory and attaching a portion thereof to the State of Nevada, and the residues to the Territories contiguous to Utah.

That committee, through Hon. J. M. Ashley, chairman, reported July 23, 1866, that they were unable to agree upon any plan which seemed to them to promise a practical solution of the abuses and evils complained of, and which were admitted to exist. They postponed the further consideration of the matter and reported the testimony.

The committee state that "the testimony discloses the fact that the laws of the United States are openly and defiantly violated throughout the Territory, and that an armed force is necessary to preserve the peace and give security to the lives and property of citizens of the United States residing therein." (H. Rep. No. 96, Thirty-ninth Congress, first session.)

* * * * *

Express statute passed July, 1862 (12 Stat. at L., 501, 502), provides suitable penalties for the violation of the law against polygamy. Have the people of Utah obeyed this statute?

* * * * *

Did this community then submit to that law and obey it? Or have they since persistently lived in its open violation? Polygamy was alarmingly increased since the passage of the law. Brigham Young himself was one of the first to violate it, publicly espousing another wife on the 29th of January, 1863.

In the summer of 1863 Judge Drake, upon the hearing of a *habeas corpus* case, ordered that a girl who had been inveigled into a "plural" marriage with a Mormon bishop should be returned to the custody of her mother, and the marshal was ordered to execute the decree. But the people seized the girl as she was passing out of the courthouse, bore her off in triumph, and delivered her to the bishop.

Judge Drake tells us that "since the commencement of 1865 polygamy has increased at least one hundred per cent. throughout the Territory. Previous to the year 1863 this doctrine or practice was not generally held to be a religious necessity, but merely a tolerance to be indulged in by those who desired it. It is now held to be a cardinal point. That and the shedding of the blood of apostates to save their souls are the two soul-saving doctrines of the Mormon faith." (Statement of Hon. Thomas J. Drake, H. Miss. Doc., No. 35, second session Fortieth Congress, pp. 9, 10.)

The question then arises, Shall a community be represented in the Congress of the United States who are thus living in open violation of a law passed for the protection of the highest interests of society and of the state?

We have thus considered the question in reference to polygamy generally, without referring specially to those obscene and disgusting practices which are, in this case, concomitants. Incest in its various forms and under various names is practiced and encouraged.

The marriage of a man with the mother and her daughters indiscriminately and marriage with a half sister are permitted. William Hepworth Dixon says that Brigham Young admitted to him in conversation that he saw no objection to the marriage of brother and sister. But he spoke for himself only, as he thought the church was not yet prepared for so strong a doctrine. (New America, by William Hepworth Dixon, p. 216.)

By reference to a sermon preached by Young April 8, 1853, and reported in the Deseret News, vol. iii, No. 12, it will be seen that he thought it (the church) prepared for another doctrine equally strong—the marriage of a mother with her own son.

Such are the doctrines and practices which are sought to be established and incorporated into the framework of society in the heart of this continent. Is it not time that the representative of this corrupt, licentious, this tyrannical, traitorous, and bloody priesthood should be sent back to his constituents, with instructions to abandon their unwarrantable assumptions of temporal power, obey the laws, and remodel their government so that it shall conform to the spirit of our free institutions?

The following facts, which are pertinent to the inquiry now in hand, are found from the foregoing extract:

1. Polygamy is the basis of a fanatical hierarchy which is antagonistic to our institutions and laws, and no one who is subject to it can be well disposed toward the Government of the United States.
2. It is a disgrace to our civilization and offensive to the moral sense of mankind.
3. It breeds open defiance of our laws, and renders a republican form of government impossible where it prevails.

• It is hostile to civil society and fatal to the welfare of the State.

IS MR. CANNON A POLYGAMIST?

We next inquire, is Mr. Cannon a polygamist? That he is, in the least, broadest, and most complete sense, is proven by his own confession, over his own signature, in the following language:

the matter of George Q. Cannon. Contest of Allen G. Campbell's right to a seat in the House of Representatives of the Forty-seventh Congress of the United States; Delegate from the Territory of Utah.

George Q. Cannon, contestant, protesting that the matter in this paper contained not relevant to the issue, do admit that I am a member of the Church of Jesus Christ of Latter-day Saints, commonly called Mormons; that in accordance with the tenets of said church I have taken plural wives, who now live with me, and have so done with me for a number of years, and borne me children. I also admit that in my public addresses as a teacher of my religion in Utah Territory I have defended said doctrine of said church as being, in my belief, a revelation from God.

GEO. Q. CANNON.

This paper was given by Mr. Cannon to prevent the contestee from bringing into the proof fully and squarely, which he proposed to do by calling witnesses who would have been compelled to disclose the facts. The paper was intended to be an unqualified surrender and agreement as to the fact of his being a polygamist in the broadest sense, and must be so considered. It therefore distinguishes this contest from all those that preceded it in which this question of polygamy was raised. In the last contest which Mr. Cannon had with Mr. Maxwell, in the Forty-third Congress (1874), he denied most emphatically that he was "living with several wives or living or cohabiting with any wives in defiant or willful violation of the law of Congress of 1862." He denied that he was then living, or had ever lived, in violation of the laws of God, man, his country, decency, or civilization, or of any law of the United States. These broad denials on the very issue which was the chief one involved in that contest doubtless had a great deal to do with the finding in Mr. Cannon's favor.

But in this contest we have not only no denial, but an open confession. We have a man knocking for admission at our doors who is a confessed teacher and practitioner and apostle and defender of polygamy in its most flagitious form; who declares that he is a member of the Mormon Church; who, in obedience to the doctrines of that church which he claims teacheth it is right and righteous to marry more than one wife, has taken several wives and lived and cohabited with them, and they have borne him children, and who has taught and teaches this doctrine as a revelation from God. The plain and unambiguous question now is whether such a man, under the law of the land and the customs and prerogatives of this House, is qualified to hold a seat as a Delegate from the Territory of Utah.

The Parliament of England, one of the greatest legislative bodies on earth, has just expelled, by an overwhelming vote, a person who ought to hold a seat among its members because in the light of this Christian century he profanely avowed his disbelief in the existence of God. This could not have been done in this Government, under whose Constitution "no religious test shall ever be required as a qualification for any office under the United States." But polygamy has been held by the Supreme Court of the nation not to be a religion but a doctrine, and will it be just for this the highest legislative tribunal of this great Christian Republic to admit to its membership one who openly and unblushingly charges God with inspiring and revealing and com-

manding to be preached and taught among men a doctrine not only of filth and lust, but of hostility to our Government and defiance to our laws? A doctrine which profanes and defies the pure and holy law which binds the families and forms thereby the great foundation of social virtue on which a free nation must rest; a doctrine which insults the sacred titles of mother and wife, and sister and daughter; a doctrine which ignores the mighty progress of mankind and defies the civilization and literature and philosophy which Christianity has brought to light among men.

WHAT QUALIFICATIONS MUST DELEGATES HAVE?

But notwithstanding that polygamy is an institution of the character we have stated, and that Mr. Cannon is its representative, it is contended that under the Constitution and law we have no right to refuse him a seat as Delegate from Utah. This leads us to inquire into the powers of Congress over the Territories, and how far this House has the right to prescribe qualifications for the admission of Delegates therefrom.

The only portion of the Constitution of the United States which refers to the Territories is Article IV, section 3, clause 2, which provides:

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

This clause of the fundamental law has received the most learned and elaborate consideration by the Supreme Court in *Scott vs. Sandford* (19 Howard, 393, &c.), wherein, after going fully into the whole history of the Territories from the time of the first cession to the Government, it is held that this clause—

Applies only to territory within the chartered limits of some one of the States when they were colonies of Great Britain, and which was surrendered by the British Government to the old confederation of the States in the treaty of peace. It does not apply to territory acquired by the present Federal Government by treaty or conquest from a foreign nation.

To all other territory it is held that the Constitution does not extend, and cannot be extended by Congress, except in so far as Congress may enact the provisions of the Constitution into a part of the organic law of such territory. This has been done in regard to Utah, first by the act of Congress which organized that Territory, and which provides that "the Constitution and laws of the United States are hereby extended over and declared to be in force in said Territory of Utah, so far as the same or any provision thereof may be applicable."

The Revised Statutes, sec. 1891, provides in somewhat different language, but of the same purport, that "the Constitution and all laws of the United States which are not locally inapplicable shall," &c.

The Constitution and all the laws of the United States are, therefore, a part of the statute law of the Territory of Utah, so far as they are applicable locally to that Territory.

Now, what was the design of the framers of the Constitution in reference to the Territory which they provided for in the clause which we have quoted above? The history of the subject clearly shows that they intended to commit the unorganized Territories wholly to the discretion and unlimited power of Congress. This is so decided by the courts in all the cases in which the subject is considered; this was so held in *Scott vs. Sandford* (*supra*), and Judge Nelson, in *Benner vs. Porter*, (9 Howard, 235), says:

They are not organized under the Constitution nor subject to its complex distribution of the powers of government or the organic law, but are the creatures exclusively of the legislative department, and subject to its supervision and control.

It is held by Judge Story that—

The power of Congress over the public Territories is clearly exclusive and universal, and their legislation is subject to no control, but is *absolute and unlimited*, unless so far as it is affected by stipulations in the cessions, or by the ordinance of 1787, under which any part of it has been settled. (Story, Constitution, sec. 1328; Rawle, Constitution, p. 237; 1 Kent's Commentaries, p. 243.)

The Supreme Court of the United States, in a very recent case, says: The power is subject to no limitations. (Gibson vs. Chouteau, 13 Wall., 99.)

See also Stacey vs. Abbott (1 Am. Law, T. R., 84), where it is held by the supreme court of one of the Territories that they "are not organized under the Constitution; they are exclusively the creatures of Congress."

But there is something more shown by the history of the clause in the Constitution in reference to Territories and by the decisions of the courts thereon. It is clear from both these that it was never intended that the status of the Territories should in any respect approach so near the character and position of sovereign States as to require that whatever agents these Territories might be entitled to on the floor of Congress should have the status and qualifications of members of Congress. The Territories in the minds of the framers of the Constitution had none of the rights and attributes of the States. No other parts of the Constitution were made to apply to them except the clause we have quoted. On the contrary, they were spoken of as *property*, and power was given to Congress to *dispose* of them as *property*, and to make all needful rules and regulations respecting them as other property of the United States. They were put in the same category with the other chattels of the Government. There is, therefore, nothing in the Constitution which will justify us in believing in the light of its history that the qualifications of agents who might be appointed to look after the interests of the Territories on the floor of Congress should be the same or even like those of members of Congress. This is so, we maintain, with regard even to that territory over which the Constitution extends directly and immediately, because it was within the control of the Government at the time the Constitution was framed. If, therefore, the Constitution did not contemplate the requirement of such qualifications for Delegates as agents of the Territory within its immediate purview, with much less plausibility can it be contended that it should require them where it is only extended as a part of the statute law. The Constitution clearly puts it in the power of Congress to say at any time and in any way it may see proper what qualifications it will exact of the agents whom as a matter of grace and discretion it permits to come from the Territories into its deliberations, and to sit among its members. Neither the Senate nor the Executive, nor any other power on earth, has any right to interfere except by permission in fixing the qualifications for admission to the House; and the concurrence and co-operation of the Senate and Executive in the passage of any enactment on the subject can go no further in giving it force and validity than to make it a persuasive rule of action which the House is at liberty to follow or disregard. "Each House shall be the judge of the election, returns, and qualifications of its own members." No law that was ever passed on this subject, which is under the exclusive and unlimited control of Congress, by any former Congress is binding on any subsequent Congress. Each Congress may wholly repudiate all such acts with entire propriety. It is customary to regard them as rules of conduct. This is well illustrated by the doc-

trine laid down by McCrary in his Law of Elections, section 349, in reference to the laws made to govern contested elections :

The Houses of Congress, when exercising their authority and jurisdiction to decide upon "the election, returns, and qualifications" of members, are not bound by the technical rules which govern proceedings in courts of justice. Indeed, the statutes to be found among the acts of Congress regulating the mode of conducting an election contest in the House of Representatives are directory only, and *are not and cannot be made mandatory under the Constitution*. In practice these statutory regulations are often varied, and sometimes wholly departed from. They are convenient as rules of practice, and of course will be adhered to unless the House, in its discretion, shall in a given case determine that the ends of justice require a different course of action. They constitute wholesome rules, not to be departed from without cause. *It is not within the constitutional power of Congress, by a legislative enactment or otherwise, to control either House in the exercise of its exclusive right to be the judge of the election, returns, and qualifications of its own members.*

The laws that have been enacted on this subject being therefore only directory and not absolutely binding, would have been more appropriately passed as mere rules of the House of Representatives, since by their passage it may be claimed that the House conceded the right of the Senate to share with it in this duty and power conferred by the Constitution. It is presumed, however, that the provisions in question were enacted in the form of a statute rather than a mere rule of the House, in order to give them more general publicity, &c.

It is also important to observe the wide distinction which Congress has always made between the powers and status of a member of Congress and a Delegate from a Territory.

A member of Congress is sent by a State by virtue of its irrefragable right to representation under the Constitution of the United States. This right Congress cannot abrogate or control or limit or modify in any way.

A Delegate is an agent of a Territory, sent under the authority or permission of an act of Congress. This right or permission is subject to the merest whim and caprice of Congress. It can be utterly wiped out or modified or changed just as Congress may see proper at any time.

A member of Congress must have certain qualifications under the Constitution.

A Delegate need have none but what Congress sees fit to provide.

A member of Congress is the representative and custodian of the political power and interests of a sovereign State, which is itself a factor and part of the Government.

A Delegate has no political power, but is only a business agent of the Territory, for the purest business purposes. He has no right to vote or aid in shaping the policy of the Government in war or peace.

A member of Congress is an officer named in the Constitution of the United States, and contemplated and provided by the framers thereof at the time of the organization of the Government. He is a constitutional officer.

A Delegate is not a constitutional officer in the remotest sense. There were no Delegates mentioned or thought of by the framers of the Constitution.

A member of Congress is chosen under section 2, Article I of the Constitution, which provides that—

The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. No person shall be a Representative who shall not have attained the age of twenty-five years and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of the State in which he shall be chosen.

This specifically and definitely and indubitably fixes how and where and by whom members of Congress shall be chosen and what qualifica-

they must imperatively have. "No person SHALL be a Representative &c., without these qualifications.

Delegate is chosen under section 1862 of the Revised Statutes, which des that—

"Territory shall have the right to send a Delegate to the House of Representatives of the United States, to serve during each Congress, who shall be elected by voters of the Territory qualified to elect members of the legislative assembly of. The person having the greatest number of votes shall be declared by the voter duly elected, and a certificate shall be given accordingly. Every such Delegate shall have a seat in the House of Representatives, with the right of debating and of voting.

is fully and very clearly provides how Delegates shall be chosen and what power they shall have, but does not exact or provide any qualifications or hint at any. This is the same provision substantially which been made for Delegates from 1787 down to this time. The provis. in the act of July 13, 1787, for the government of the Northwest Territory, is that the joint assembly of that Territory "shall have authority to joint ballot, to elect a Delegate to Congress, who shall have a seat in Congress with the right of debating, but not of voting."

These few marked points of distinction between the two offices not only that the constitutional qualifications for members do not apply to Delegates, but that none of the legislation which has ever been enacted on the subject seems to have been founded on the belief that they did.

RESS HAS ADDED TO THE CONSTITUTIONAL QUALIFICATIONS OF MEMBERS ; WHY NOT OF DELEGATES ?

admitting for the purposes of this discussion, what cannot be maintained, that the same qualifications which entitle a member of Congress to representation shall also entitle a Delegate to the same right, and I still insist that Congress has the right and power to say that a polygamist shall not be admitted as a Delegate. Under the high power inherent in every organization on earth to preserve its integrity and existence Congress has the indubitable right to keep out of its councils any person whom it believes to be dangerous and hostile to the Government.

During the war almost the whole Congressional delegation from the State of Kentucky were halted at the bar of the House, and, on the admission of a member, were not permitted to be sworn until it was ascertained whether they or either of them were guilty of disloyal practices. They had each every qualification usually required by the Constitution ; they were duly and regularly elected and returned ; they were sent by their sovereign State, holding all her relations in perfect accord with the Federal Government ; but the House proceeded to inquire into each case, not until a reasonable investigation was had were any of them admitted. The committee which had the matter in charge reported, and the House adopted and laid down, the following rule on the subject of such cases :

"never it is shown by proof that the claimant has, by act of speech, given aid or assistance to the rebellion he should not be permitted to take the oath, and such speech need not be such as to constitute treason technically, but must have been overt and public, and must have been done or said under such circumstances as to show that they were actually designed to, and in their nature tended to, aid the cause of the rebellion.

In the case of John Young Brown, who was among the number, the Committee almost unanimously reported against his right to admission on the ground that he had written an imprudent and disloyal letter ;

nothing more. He had never committed an act of treason. He was never arrested or tried or convicted. He denied all treasonable intent in the letter and made every effort in his power to explain and extenuate his offense. But seven out of the nine members of the Committee on Elections of the Fortieth Congress reported that he "was not entitled to take the oath of office, or to be admitted to the House as a Representative from the State of Kentucky." This report was adopted by the House by a vote of 108 to 43. The minority report in that case made an argument against the action of the majority in almost the same words and on identically the same grounds that the minority of the Committee on Elections occupy in the case under consideration. It was argued that Mr. Brown had all the constitutional qualifications, and that Congress had no right to exact more; that in any event he had never been tried or convicted of treason, and unless convicted of the crime even treason was no disqualification. But Congress then laid down the rule above given, and never abrogated since, that, in addition to the ordinary constitutional requirements, every man must be well disposed and loyal toward the Government before he can be admitted to Congress to aid in forming its policy and controlling its destinies.

The act of July 2, 1862, providing what is known as the iron-clad oath, added a new and marked qualification to those required of members of Congress prior to that time, and every member who has taken that oath since has submitted to the exaction of that additional qualification. The distinguished counsel who argued the case of Mr. Cannon before the Committee on Elections felt the force of this act, and the long-continued practice of Congress under it and explained it as a war measure. He said:

The grounds upon which this law was vindicated, although not stated with much care or precision, are nevertheless clearly enough disclosed by the debates. It was enacted as a war measure. The iron-clad oath was adopted as the countersign which should, in time of war, exclude domestic enemies from the civil administration of the Government, in the same manner and for the same reason that the military countersign was employed to exclude those enemies from the military lines of the army. It was enacted as a measure of defense against an armed enemy in time of war, and was as necessary and as justifiable as any other war measure not specifically marked out in the text of the Constitution.

If Congress could, almost without challenge, provide and add such a distinct and imperative qualification, not for Delegate but for a member of Congress, in 1862, why may we not in 1882 ask a reasonable additional qualification for a Delegate from a Territory who does not come within the letter or spirit of the Constitution? The act of 1862 was a bold and radical assertion of the doctrine of self-preservation on the part of Congress to maintain its integrity and the purity and loyalty of its counsels. The resolution recommended by the majority of the Committee on Elections only says to the people of Utah, you shall not abuse the privilege of representation which we allowed you on the floor of Congress, by sending as your Delegate a person who adheres to an organization that is hostile to the interests of free government, and whose doctrines and practices are offensive to the masses of the moral people of the great nation we represent.

CONCLUSION.

The following is a summary of the reasons for my concurrence in the resolutions of the majority of the committee:

1. The history of the cession and organization of the Territory, which belonged to the Federal Government at the time of its formation, the

history of the clause in the Constitution which relates to that Territory, and the Constitution itself, all show clearly that it was not contemplated or intended that Delegates which might be sent from said Territory, then immediately under the Constitution, should have the same qualifications as members of Congress.

2. The Constitution does not extend over Utah, except as a part of the statute law provided for that Territory by Congress, and there is, therefore, more reason for holding that the qualifications required for members of Congress by the Constitution do not extend to Delegates from that Territory than there is in relation to Delegates from Territory immediately under the Constitution.

3. The Constitution not only does not provide that Delegates shall have the same qualifications as members of Congress, but no law, in almost a century of legislation on the subject, has so provided.

4. There is no reason why the qualifications of Delegates should be the same as those of members of Congress. Their status and duties and powers are widely different, and their qualifications should be made to conform to those powers and duties which in case of Delegates are purely of a local and business character.

5. The Territories can only be held and governed by Congress with one single purpose in view, which is to adapt and prepare them for admission as States of the Union. It will hardly be contended that Utah will ever be admitted as a State while polygamy dominates it, or that it is preparing it for admission as a State to hold out to its people the delusive doctrine that a polygamist is not disqualified as a member of Congress, and therefore that polygamy is no bar to the admission of Utah to the Union.

6. No law fixing the qualifications of Delegates passed by any former Congress would be binding on any subsequent Congress. EACH House shall be the judge of the qualifications of its own members, and, for a much stronger reason, IT should be the exclusive judge of the qualifications of the Delegates, which are its creatures, and which it admits as matter of its own discretion.

7. Congress has held, from 1862 down to this time, that it has the right to prevent the admission of persons as members who are hostile to the Government by excluding them on that ground, although they possess all the other qualifications required by the Constitution; with much more propriety, and much less stretch of power, Congress has the right to exclude a Delegate who is not well disposed toward the Government, and who openly defies its laws.

OPINION OF MR. RANNEY, IN CANNON vs. CAMPBELL, AS EXPRESSED TO THE COMMITTEE IN SESSION.

The chairman has drawn and has printed his report, which he proposes to make to the House, and which is before us.

I am asked, among other members of the committee, to express my views of this case to go on the records of the committee.

The committee are instructed only to *report as to the prima facie right or the final right of the claimants to a seat.*

1. As to the facts of the case, I concur in the findings stated in the report, so far as they are material to the issues of law involved in the case. The state of the vote as returned by the county canvassers to the

secretary of the Territory, and as alleged in the notice of contest and admitted in the answer of the contestee, shows the vote to have been 18,568 for Mr. Cannon, 1,357 for Mr. Campbell, and 8 for all others. There is no substantial ground on which the claim that Mr. Cannon was an alien and never naturalized according to law can be satisfactorily maintained. That question was heard and settled in the House in another contest long since, and Mr. Cannon has accordingly held a seat in the House as Delegate from Utah for four terms of Congress, and it is time for that part of the controversy to be forever put at rest, especially as it is now proved again conclusively by both record and parol evidence. He has been shown also to be possessed of all the qualifications prescribed by the Constitution and laws of the United States, as well as those of the Territory.

It appears that the certificate was denied to him by the governor on an adjudication made by him that Mr. Cannon was an alien, not legally naturalized, and because he was charged with and did not deny that he was "*living in polygamy*, a violation of the act of Congress of 1862 making it a crime," and in view of a bill which passed the House of Representatives in June, 1874 (Cong. Rec., p. 5046), but did not pass the Senate, providing that Delegates in Congress shall be twenty-five years old, seven years a citizen, and an inhabitant of such Territory, "and no such person who is guilty of bigamy or polygamy shall be eligible to a seat as such Delegate."

Accordingly, the governor cast aside the 18,568 votes given to Mr. Cannon as void, and gave the certificate to Mr. Campbell on the strength of his 1,357 votes.

While the governor undoubtedly acted in good faith and according to the law as held by some respectable authorities, the better doctrine and the one established by the precedents of Congress is otherwise, and he was in error, having no authority of law for what he did in the respect named. He doubtless followed Cushing's Law and Practice of Legislative Assemblies, pages 52, 66, 67, and the English rule, and some other respectable authorities found in the decisions of the courts in some of the States. It was the same doctrine under which recently, on the advice of eminent lawyers, a person having the highest number of votes for overseer of Harvard College was set aside as ineligible, because he lived out of the State, and the office given to the minority candidate.

The governor knew probably that a new House did not always at least feel bound by the precedents of former Houses; just as the majority of the committee now seem disposed to disregard the precedent of *Maxwell vs. Cannon*, in the Forty-third Congress, and which has been yielded to in three successive Congresses since.

Besides this, the governor exhibited his fairness and good faith by giving a certificate, not absolute in form, but one which was perfectly consistent with the fact or assumption that some other person, not deemed to be eligible, had more votes than Mr. Campbell.

We have before us no evidence as to the actual votes cast or of their legality, save what is found in the copies of the county returns made to the secretary of the Territory set up in the notice of contest and admitted to have been made in the answer of the contestee.

These returns having been required to be made by the laws of Utah (Compiled Stat., 1876; Stat. of 1878), and being in conformity thereto, are competent evidence of the facts therein contained, and not being controverted by other evidence offered by the contestee, the facts appearing by the returns must be assumed as true for the purposes of this contest, under Revised Statutes, section 121.

I do not regard the copy of the record of proceedings before the governor as evidence only of what those proceedings were.

Under Revised Statutes, section 1844, the secretary was required to keep a record of them, and he is the proper certifying officer. The facts embraced in the records and papers certified are competent evidence only so far as they throw light upon the action and ground of action of the governor.

The certified copies of the returns, if required as evidence, made by the secretary, in my judgment should have been put in proof before the examiner who took the evidence, so that the contestee might have an opportunity then and there to meet and control it if he desired. But they stand on a footing different from that on which the copies of the executive record rest. It becomes of no consequence now, however, inasmuch as the returns are before the committee on what may not appropriately be called the pleadings.

I do not deny that the committee may, in their discretion, and when it works no prejudice, admit and use such copies now, and concur in the views of the chairman on that point, because the law regulating the proceedings in contested elections is not absolutely and conclusively binding on the House, except as a convenient mode of procedure which has been adopted.

This is all I need to say upon the facts.

2. I agree in the main with the report of the chairman, wherein he says, in substance, that it is clear that the clause of the Constitution relative to elections, returns, and qualifications of members applies and extends to Delegates, and that substantially the same qualifications (unless it be as to age) are prescribed for both member and Delegate.

I would add to the concession the assertion that the rule of construction which has been established in regard to the Constitution relating to members, to wit, that other qualifications cannot be added to those specified, and none taken away, applies for the same reason to Delegates, when the qualifications for them are prescribed and specified by statute; also, what is undoubted law, that *judging* of the qualifications comprehends only a determination of the question whether the member or Delegate answers the qualifications prescribed as the conditions of his eligibility.

The manifest intent of the Constitution was to fix certain things as unalterable conditions of eligibility, and leave all else for the electors to judge of and determine for themselves. Congress has shown the same intention in statutes erecting Territorial governments, and giving a right of qualified representation. So firmly has the House adhered to this fundamental principle of a representative government that the uniform rule of Congress has been not to entertain questions of alleged bad personal character in judging of what are called "qualifications." In exercising the right of expulsion even the established rule has been not to expel for bad character or even crimes committed before the election and known to the electors at the time. (McCrary, secs. 521, 2, 3.) A few cases connected with the rebellion, and arising out of known disloyalty, are exceptions, but they stand on different grounds. A Delegate's power was so limited and circumscribed that some of the organic acts did not even prescribe citizenship as a condition of eligibility, and Congress held it to be implied, as in the Michigan case. (White's case, Hall & Clark, p. 85.)

It follows that all this committee has to do on this point is to see whether Mr. Cannon was eligible or had the prescribed qualifications.

3. It is sought to avoid the conclusion to which the doctrine of the

last point leads, on what I consider most untenable and dangerous grounds. They contravene fundamental principles of law, and a practice which has existed from the beginning of the Government.

Mr. Strong, in 1850, then on Election Committee of the House, since an illustrious judge upon the bench of the United States Supreme Court, has forcibly illustrated and stated that all admissions of Delegates to a seat are by virtue of established laws, and not by grace or within the discretion of the House. (See Smith's case, Messervy's case, Babbitt's case, 1 Bartlett, pp. 109, 117, 16.) Showing that he has been admitted only by right from the formation of the confederation down to the Constitution, and since to this time.

It is said that a Delegate is not named in the Constitution and is not the creature of the same, while a member is, and that his admission to a seat is *ex gratia*. The legal purport of the opposite contention, when expressed in words, is: "It is incompetent for Congress and the Executive to impose on any future House the right of a Delegate to a seat"; "they (the acts) were persuasive only to the houses of future Congresses"; and, "in short, it may be said that Delegates sit in the lower House by its grace and permission, and that it makes no difference whether that permission is expressed in a statute or in a mere resolution of the House. The House can disregard it and refuse to be bound by it, because it affects (somewhat) the organization and membership of the House alone."

It does not change the legal purport in my judgment, to say Congress had no power to impose upon the House a Delegate "*with defined qualifications*." I concede that powers could not be conferred upon a Delegate which would infringe upon the constitutional rights of State representation or those of a full member.

The gist of this doctrine is that a statute which the Constitution authorizes Congress to make may be set aside and made null and void at the pleasure of one branch of the law-making power.

If the Constitution authorizes Congress to enact the statutes relating to the Territories, and give a Delegate, duly elected and returned, with the requisite qualifications, a right to a seat and to debate, without a right to vote, no power under heaven can rightfully deprive him of these rights and privileges except Congress itself, by some other statute passed by both Houses.

The doctrine must lead to this: That the statutes organizing the Territories, with such powers and rights, are not authorized by the Constitution, and are void, unless the House sees fit to observe them. But this clause of the Constitution has been sanctioned and sustained as authorizing such things too often to require any discussion of the subject.

How the sitting of a Delegate can be said to infringe upon any constitutional rights of a member I fail to see. Nobody pretends that the statute attempts to make him a member in the full sense of that term, and he is not a creature of the Constitution in the exact sense of that term, but he is a creature of a statute which that instrument authorizes, and can subsist and enjoy his rights and privileges without infringing upon the constitutional rights of a member, and that is enough to sustain the statute as valid; and, if so, it is not merely "*persuasive*" on all future Houses, but absolutely binding on their consciences, and must be obeyed. It can be disregarded only in the exercise of a power without the right, as a sort of usurpation of authority.

The right of representation on the part of the Territory and of a Delegate to his seat has always been accorded *as such*, and not as a

grace or favor, save as the grace and favor of *Congress*, and not of one House alone. The doctrine contended for strikes at the very root of the right of representation conferred, and commits the Delegate to the discretion and caprice of the House, instead of the full law-making power.

The organic law of a Territory takes the place of a constitution as the fundamental law of the local government. It is obligatory on and binds the Territorial authorities, but *Congress* is supreme, and for the purposes of this department of its governmental authority has all the powers of the people of the United States, except such as have been expressly or by implication reserved in the prohibitions of the Constitution. * * *

It may do for the Territories what the people under the Constitution of the United States may do for the States. (Waite, Ch. J., in *Bank v. County of Yankton*, 101 U. S., 133.)

It follows that Congress, and Congress alone, can give rights by statute law, adopting and applying, if they please, the principles of the Constitution so far as they can be made applicable, and imposing likewise reciprocal obligations upon every other branch of the Government and the people, so the rights conferred may be guaranteed and enforced.

The section 1891 of the Revised Statutes extends over Territories the laws and Constitution of the United States, except so far as locally inapplicable, and this was designed to give a representative form of government and republican institutions to Territories, which were incipient or prospective States, and give the Constitution effect as law, with reciprocal rights and obligations.

A Delegate becomes in one sense a member, and yet not properly so called. He is enough so to render applicable in spirit the law in regard to contested elections, which in terms applies only to members the clause of the Constitution which makes the House judges of the qualifications, returns, &c., of the members, and the other one which relates to the expulsion of members. (*Maxwell v. Cannon*, Forty-third Congress.)

The analogy, if justified at all, must be carried and applied all through, and such has been the uniform precedent and practice heretofore. The law should not be changed to meet the strain of a special desire in an individual case.

The discussion in *Maxwell vs. Cannon* covers the whole subject matter, and I adopt its doctrine in the main.

I feel very clear that the organic act of Utah and the Revised Statutes, including sections 1860, 1862, and 1863, are constitutional and valid and as such binding upon the House as much as on anybody else.

Section 1862 reads: "Every Territory shall have the right to send a Delegate to the House of Representatives of the United States, to serve during each Congress, who shall be elected by the voters in the Territory qualified to elect members of the legislative assembly thereof. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be given accordingly. Every such Delegate shall have a seat in the House of Representatives, with the right of debating, but not of voting."

It is to be observed that the language is, "*shall have a seat*," &c., and we may as well reject everything else as that.

4. It follows, in my judgment, that Mr. Cannon, being eligible and duly elected and returned, makes out his legal right to a seat under the statutes, and having found thus much his "final right" is determined, subject only to the right which the House has to expel him by a two-thirds vote.

The resolution of reference is not to determine which claimant has the strongest case of *favor* or *grace*, but which has the "right," i. e., the *legal right*, and we must find this much only. If no legal right whatever, then we can find that and say so only under this resolution.

5. The only objection urged is *polygamy*.

My position on that point is: It is not a disqualification affecting the legal right, but concerns only the dignity of the House, and an investigation into matters which concern that alone must be instituted in the House, and cannot be started in a contest made by a contestant; for the contest embraced and committed to the committee under chapter 8, p. 17 Revised Statutes, affects only the legal right. (*Maxwell vs. Cannon*, adopted by McCrary, S. 528.)

The reason for it is apparent and sound, otherwise any outsider, or pretender, or a real contestant, or contestee, may proceed to take evidence of and spread upon the record any amount of scandal or any charge affecting the moral character—the private character—of any member of the House.

The House must alone proceed to vindicate its own dignity and character, and does not allow any one outside of it to start and take evidence for them on that subject unless by special order. Such an investigation is usually referred to a special committee.

The principle involved is of more importance than the seating or unseating of any one member.

I agree with all that is in the report against polygamy, and in the duty of Congress to obviate by law its evils, so far as is possible, but let it be done by law, and not in violation of law.

If Mr. Cannon is eligible under existing law, and was duly elected and returned, as we find, we give him *his* legal right to a seat because the law (sec. 1862) says he shall have it.

We can then exercise *our right* and expel him under another independent provision of the Constitution, upon a proceeding started and conducted in the usual and the legal way. We have his admission, put in under protest, and may act on that if sufficient and if he does not demand a hearing. It is thus:

I, George Q. Cannon, contestant, protesting that the matter in this paper contained is not relevant to the issue, do admit that I am a member of the Church of Jesus Christ of Latter-day Saints, commonly called Mormons; that, in accordance with the tenets of said church, I have taken plural wives, who now live with me, and have so lived with me for a number of years, and borne me children. I also admit that in my public addresses as a teacher of my religion in Utah Territory I have defended said tenet of said church as being, in my belief, a revelation from God.

GEO Q. CANNON.

6. If it be true, however, that admission rests only on the *grace* of the House, and lies in its discretion, I can see my way clear to admit Mr. Campbell on the facts before us.

It could be urged in that event that the law as to contested election does not apply in terms, and should not be extended to the present case by analogy or otherwise. The contest as conducted outside can be disregarded by the House, and the governor's certificate taken and given effect to.

If the right of a Delegate rests in the discretion of the House and not on positive statute and on binding obligations of law, I see the strongest reason why we should exercise that discretion and extend the grace allowed to Mr. Campbell and the non-Mormon people whom he evidently represents. The object is to strike down Mormonism, and particularly the institution of polygamy, which is said to be practiced by 2,500 of the

about 70,000 Mormons in Utah. Mr. Cannon is said in the report of the chairman to be personally unobjectionable, independent of this polygamy objection, for he says: "We desire to cast no imputation on the contestant personally, because in his deportment and conduct in all other respects he is certainly the equal of any other person on this floor." Mr. Campbell, on the contrary, is the representative sent by the non-Mormon people.

But I cannot do this consistently with my views as hereinbefore expressed. It has nothing to do with the merits of this case that the law *ought* to be otherwise. We must administer the statutes as they *are*. Mr. Cannon has been elected and sent under the statutes as they stand. He is entitled to the same salary and pay as full members under other express acts of Congress (Rev. Stats., secs. 35-51), and an exclusion results in legal effect in depriving him of that right, which is clearly *property*, and cannot be taken away except by due process of law, whatever may be said of the office being or not being property.

It is to be observed, further, that the House has repeatedly recognized and sanctioned the law as I claim it to be. In 1874, it passed a bill making polygamy a disqualification; it did not pass the Senate. Mr. Cannon, a then known polygamist, was admitted when he first was elected, after objection and investigation. He was investigated, and the House refused to expel him for this cause. He has served four terms of Congress without further challenge until now. Dr. Berneishel, a polygamist, was admitted and served ten years as a Delegate from Utah. At this session a bill has passed the House, *without a dissenting vote*, again making polygamy a disqualification. A bill has passed the Senate of like purport, among other things, and all that remains is to have concurrent action on the same bill to enact a bill which shall govern action in the future.

I do not deny the right of expulsion at the present term of Congress if an investigation into the alleged grounds for it is duly ordered and made, and it is made to appear that Mr. Cannon is still violating and putting at defiance the acts of Congress, and openly inciting others to do so, and persisting in such a course of conduct. The House will doubtless observe the clause of the Constitution insuring to every person full religious freedom, and take cognizance only of illegal acts and conduct within the rule of the Supreme Court as expounded in *Reynolds vs. The United States* (98 U. S. Rep.), while all will probably agree with what was so aptly said long since by Sir William Blackstone:

Polygamy is a great violation of the public decency of a well-ordered state, and can never be endured under any rational civil establishment, whatever specious reasons may be given for it.

It ought, however, to be further observed that Congress, in passing the organic act of Utah, did not provide anything against the institution and practice of polygamy, although it then existed, and did not do so subsequently until 1862, when even then it only made it a crime for a man having one wife living to marry another, and did not include the continuance of polygamous relation under marriages already contracted (Rev. Stat., sec. 5352.) As all polygamous marriages before the act of 1862 were in the nature of civil contracts, and not prohibited by any laws in force in Utah (unless it is the moral law), it has never been decided as yet that they were invalid, or that they could be made so, or a crime, by any retroactive or *ex post facto* statute.

Unless Mr. Cannon is shown to have taken one of his four wives since the act of 1862, he has therefore committed no crime under the acts of Utah or the laws of the United States, which alone apply

thereto as statute law. If continuing to live with wives which he had married before that time is not a crime under existing laws, he is not shown to have been guilty of any criminal offense, however much he has offended against the laws of morality and the fundamental rules of the civilized society of this country. The language of the written admission of Mr. Cannon is not clear, and, without further proof, I have no right to assume that he has married any one of his wives since the passage of the act of 1862. Hence the importance of an investigation to get proof of this fact, if deemed of legal weight. All else is a question of morality.

Will the House, independent of the Senate, attempt to virtually *outlaw* the whole Mormon population of Utah, and say they shall have no representation of their own choice, in violation of the fundamental policy of a republican form of government and of existing acts of Congress, or join with the Senate in passing all salutary laws which may operate in the future to regulate their action and correct, as far as possible, the evils of the system? There are said to be only about 2,500 polygamists out of a Mormon population of 75,000 or more. It is a serious question of policy, as well as of alleged right. For one I prefer to observe good faith ourselves and execute the statutes as they are, and then correct them so they may be more stringent and salutary for the future, regretting only that it has not been done before.

No temporary passion should rule the hour, and, however high it may rise, we should not allow its wave to sweep us from safe legal moorings, or betray us, as legislators, into what is little else than a declaration of war against a sect of so-called religiouists, unless through the medium of laws.

Resolution offered in committee by Mr. Ranney.

Resolved, That George Q. Cannon was duly elected and returned as a Delegate for the Territory of Utah to a seat in the Forty-seventh Congress.

Resolved, That the charges against the private and moral character of George Q. Cannon, so far as proved in the record, do not involve or embrace any legal disqualifications for the office of Delegate under existing statutes and laws, are not referred to the committee under the resolution of the House, and that the offense thus presented be brought to the attention of the House for their action.

VIEWS OF MR. G. ATHERTON.

On the question whether the practice of polygamy and a belief in the same is a "disqualification" on the part of a Delegate to a seat in the House of Representatives.

I do not care to discuss the questions involved in this case on which the committee substantially agree. They have been fully considered and ably argued, and the committee (except a single member) unite in the opinion that Cannon was legally elected, by a large majority, a Delegate from the Territory of Utah to the Forty-seventh Congress; that he was and is a naturalized citizen of the United States, and entitled to his seat as a Delegate unless *disqualified* by the fact that he practices and teaches the doctrines of polygamy.

QUESTION STATED BY THE MAJORITY.

As improperly stated by the majority, the question is, whether the House will admit to a seat as a Delegate "one who practices and teaches the doctrines of a plurality of wives in open violation of the statutes of the United States and contrary to the judgment of the civilized world."

AN UNWARRANTED ASSUMPTION.

In order to construct an argument it is best to examine the truth of the premises.

It is an assumption wholly unwarranted by the evidence in this case that Cannon has committed any crime against the statutes of the United States. It is said he admits he is a member of the Mormon Church, and has taken plural wives who now live with him, and have for a number of years, and borne him children; that he believes in the Mormon religion, and defends its tenets as a revelation from God.

Admitting all this to be true, it shows the commission of no statutory offense.

No act of Congress prior to the act of July 1, 1862, made bigamy a crime in the Territories. Taking plural wives was not a crime at common law.

This act punished the *contracting* of a second marriage, and did not and does not prohibit or punish cohabitation with plural wives at all. There is no proof and no admission in this case that Cannon contracted any marriage after the passage of the act of 1862. The presumption is always in favor of innocence, and every element of crime is to be proved. Therefore the arguments start out on a premise wholly destitute of proof.

A CONSTITUTIONAL RIGHT.

As abhorrent as the doctrine may be to others, Cannon as an American citizen has the right to believe and teach the doctrine of a plurality of wives as a revelation if he chooses to, and he is not to be punished for it. Whether he is guilty of doctrines and practices "contrary to the judgment of the civilized world" is not quite the question we are trying. We are for the time being judges in this case—not politicians or partisans. We are charged to investigate and report whether Cannon, by the law of the land, is entitled to a seat in this House. To properly determine this question we must resort to the testimony in the case, the law as drawn from reason and precedent, and turn a deaf ear to ignorant clamor.

FORMER PRACTICE OF THE HOUSE.

This House has heretofore admitted to a seat in its halls, when it had both large Republican and large Democratic majorities, this same man. The same Delegate from the same Territory under a similar state of facts, and the House has not suffered from the contact.

THE REAL QUESTION AT ISSUE STATED.

Such being the deliberate practice of the House, upon full consideration, the question recurs:

Should a Delegate duly elected, and having the qualifications of Representatives of the people, be denied admission to a seat therein be-

cause his teachings and practices involve what we deem moral turpitude? In other words, Can the seat of a Delegate, who has not committed any statutory crime, be withheld from him on a charge involving moral turpitude that in no way affects his qualifications as a member of this House?

It is admitted by fourteen members of the Committee on Elections, and perhaps all, that if Cannon was a Representative elect from a Congressional district in a sovereign State, or "a constitutional member," you could not deny him admission if he had been duly elected, duly returned, and had the qualifications as to age, citizenship, and inhabitancy required by the Constitution, upon any charge of moral disqualification. And that if he was guilty of practices or even crimes not involving his constitutional qualifications, the House could only free itself from his presence by the exercise of the power of expulsion.

OBJECTION STATED.

But it is said a Delegate is not a constitutional member; his election is not provided for by the fundamental law, and his powers and duties are limited, and, being simply a creature of the statute, the Delegate sits by the grace and permission of the lower House, and that the House may at any time disregard the statute and deny the Delegate admission for any reason satisfactory to itself, whether that reason involves such qualifications as are prescribed by the Constitution or others of a different nature.

Does the result follow as claimed? It is true the election of Delegates was not provided for in the Constitution. But the First Congress of the United States enacted a law for the admission of a Delegate, and he was admitted thereunder, and Delegates have had seats in the House ever since.

CAN THE HOUSE ANNUL AN ACT OF CONGRESS?

That statute and like statutes were enacted not by the House alone, but by the Senate and House of Representatives, with the sanction of the President of the United States—by the law-making power of the Government—and have been in full force and effect ever since.

They confer on a Territory the right to have an agent and representative on the floor of the House to speak for his constituency, to advocate measures for their relief and benefit, and to oppose all measures he may deem against their interests. They give to the Delegate himself a right to the emoluments and dignity of the office, and, being the law of the land, these statutes bind the House as much as they do the humblest citizen. They are subject to repeal, but while in force may not be disobeyed; and a Delegate, under the statute, cannot be arbitrarily deprived of his seat while the statute is in force and unrepealed, any more than a Representative can who holds his place under the Constitution.

It is an absolute *non sequitur* to say a Delegate may be denied admission because he is the creature of statute, while a Representative may not who claims under the Constitution. The statutory right of the one is entitled to the same consideration by the House as the constitutional right of the other, so long as the statute remains in force.

QUALIFICATIONS OF DELEGATES.

Now, what qualifications do the statutes require of Delegates?

When the Constitution was adopted it stipulated what should be the qualifications of the members of the House. But one kind of members were therein contemplated. These were the Representatives from States, or of districts within the States. At the first Congress another kind of member was created by statute—one of limited powers, but a member, nevertheless. He had a seat on the same floor, received the same compensation, could propose and advocate, and, in fact, do anything a Representative could do, except to vote and to move to reconsider. Thenceforth the membership of the House consisted of two classes : Representatives and Delegates. When this new species of membership was authorized, they came in subject to that clause in the Constitution that the House should be the judge of the elections, returns, and qualifications of its members, and also subject to the power of the House by a two-thirds vote to expel a member ; and their qualifications as to age, residence, and inhabitancy was that required of members. They were members of the House with limited powers, and must have like qualifications.

If that result does not follow from the statute creating the office of Delegate and making a further membership in the House, it is to be observed that Congress has extended the Constitution and statutes of the United States over the Territories, except where locally inapplicable. The Constitution becomes thereby a part of the organic statutory law of the Territory, and extends the qualifications of the Representative to the Delegate to be elected.

HOUSE HAS ONLY POWER OVER MEMBERS.

What power has the House to judge of the election, returns, or qualifications of a Delegate, if the latter is not a member of the House ?

What power have we to expel a Delegate for the grossest misconduct or crime ?

You may look through the Constitution, statutes, rules of the House and of the committee in vain to find a single provision to examine or judge of the elections, returns, or qualifications of Delegates unless a Delegate is a member.

Neither will you find any power of expulsion for any cause unless a Delegate is a member.

Do you say the House has inherent power to protect itself, which includes the power of admission and expulsion ? I answer, only as to its members, and if you deny the membership of Delegates, you abrogate all power to judge of their elections, returns, or qualifications, or to expel for misconduct.

The construction that the members of the House are composed of the Representatives and Delegates elected thereto will not give the Delegate a right to vote, as has been erroneously assumed. The statute provides directly that they shall not vote, and as to that the Constitution made the organic statutory laws of the Territories is not applicable.

If a Delegate is not a member in the sense I have contended there is no act of Congress authorizing a contest to be had touching his seat.

THE SEATS OF MEMBERS MAY BE CONTESTED.

The practice act provides what a contestant must do if he desires "to contest the election of *any member*." See Revised Statutes, section 105 *et seq.* Its provisions relate simply to *members*. A *Delegate* is not mentioned in

Rule 11th of the House provides that

All proposed legislation shall be referred to the committees named in the preceding rule, as follows:

Subjects relating:

Clause 1. To the election of *members*: to the Committee on Elections.

Clause 47. The following-named committees shall have leave to report at any time on the matters herein stated, to wit:

The Committee on Elections, on the right of *a member* to a seat.

The Committee on Elections have no power to investigate the case of Cannon *vs.* Campbell, the House no authority to adjudicate thereon, unless they claim to be members-elect of the House.

No rule of the House ever sent this case to a committee unless these parties claim to be elected members.

A REPRESENTATIVE IS A MEMBER, BUT A MEMBER MAY NOT BE A REPRESENTATIVE.

The difficulty results from a misconception of terms, in failing to distinguish between a Representative in the House and a member.

A Representative is a member, but a member may not be a Representative in the technical sense of the term; a Delegate is also a member.

A Representative is a member with full powers. A Delegate is a member with limited powers. Both occupy seats, confer, consider, advocate, and propose, and form the membership of the House under the Constitution and statutes of the land. Their seats are contested by the same statutes and under the same rules of procedure. Their elections, returns, and qualifications are judged by the same standard, and they are excluded from the House for cause alike by a two-thirds vote of the voting membership.

This question, as before observed, is not an open one.

MAXWELL *vs.* CANNON IN FORTY-THIRD CONGRESS.

The exact question was determined in the Forty-third Congress in the case of Maxwell *vs.* Cannon (Smith's Cont. El. Cases, p. 182).

Gerry W. Hazleton, on behalf of the Committee on Elections, submitted the principal report. As a precedent it [that case] is unreversed, and until now unquestioned, and the reasoning on which it stands is unassailable.

That report takes up the question of polygamy, and discusses the proposition whether the fact that George Q. Cannon at and before the election in question was openly living and cohabiting with four women as his wives at Salt Lake City, and was still cohabiting with them, disqualified him to represent that Territory as a Delegate.

The question of the jurisdiction of the committee is first raised, and the committee determine that their jurisdiction is limited to the elections, returns, and qualifications of its members; that the qualifications alluded to are age, citizenship, and residence, and that the uniform practice of the House limited the inquiry as to qualifications to those pointed out in the Constitution itself.

The matter being conceded (so says Mr. Hazleton's report) that Cannon had these qualifications, the query arose:

"Does the same rule apply in considering the case of a Delegate as a member of the House?"

It was shown that the act organizing the Territory of Utah extended the laws and Constitution of the United States over that Territory so far as the same were applicable; and it was suggested that whether the Constitution was technically extended as such over the Territory or

not, that certainly Congress could make the Constitution a part of the statutory law of the Territory as much as any other portion of the organic law thereof; that, having done so, the committee must fairly and justly assume that by making the Constitution a part of the law of the Territory Congress intended to indicate that the qualifications of the Delegate to be elected should be similar to those of a member. The House, however, went further than this report, which simply found that Cannon had been duly elected and returned, and adopted a resolution, offered by H. H. Garrison, declaring Cannon to have been duly elected and returned, and entitled to a seat from the Territory of Utah.

THE EFFECT OF CRIME IN CONTESTED-ELECTION CASES.

The same rule as to the limits of the jurisdiction of the committee and as to the result of crime imputed to a contestee, is laid down and insisted on in a report made by Speaker Keifer in the case of Donnelly vs. Washburn in the Forty-sixth Congress. In that case Washburn was charged with bribery, and it was insisted that the charge was successfully proved against him, and as a result of it that the bribed votes were not merely to be deducted, but that the crime being fastened on him worked a disqualification to the office that he had sought through bribery. But the learned Speaker insisted it only excluded the bribed votes, and that, even if guilty of bribery, that was not a constitutional disqualification, and that bribery "does not vitiate when it does not impregnate."

A WELL-CONSIDERED PRECEDENT SHOULD NOT BE LIGHTLY OVERTURNED.

If the settled law upon this subject is to be overturned, it ought to be upon a very clear case and for reasons the most cogent.

The rule has heretofore been that when a person claiming to be a member elect, whether Representative or Delegate, knocks at the door of the House for admission, the questions asked are:

1. Was he duly elected?
2. Was he duly returned?
3. Has he the qualifications of age, citizenship, and inhabitancy required alike of the Representative by the Constitution or the Delegate by Constitution and statute? If the questions are answered in the affirmative, he is awarded his seat, subject to the expulsion of the House for misconduct or crime that would make him unworthy of the fellowship of the House.

RULE AS TO QUALIFICATIONS OF REPRESENTATIVE AND DELEGATE SHOULD BE THE SAME.

It is said the provisions of the Constitution are inapplicable to the qualifications of a Delegate. Will some one tell us why? Does it not furnish a good rule as to age, residence, and citizenship? Can any person give a good reason why a higher standard of morality should be required for a Delegate, who can only speak and not vote, than for a member, who can both speak and vote?

Besides, a departure from the Constitutional rule lands us in a wide ocean, without chart or compass, so that a Delegate shall hold his place, not by a charter of right which each member is bound in conscience to

obey, but his admission or rejection depends upon the undefined and ever-changing moral test of the majority.

To-day polygamy; to-morrow fornication or other breach of marital duty may form it; next week the gambler may be interdicted, and a month later the drunkard; infidelity may become the test, or some religion or tenet so different from our own that we feel it a crime against the civilization of the nineteenth century. Either or all may stand like flaming swords to protect the portals of the House against the offending Delegate who seeks admission.

There is no despotism so intolerable as the despotism of an unbridled majority, unrestrained by law.

RIGHT OF HOUSE TO REJECT AN ELECTED DELEGATE.

Why should the House refuse to receive a member or a Delegate having the qualifications prescribed by both Houses of Congress? Utah was admitted as a Territory by the concurrent action of the law-making power of the nation. She was given qualified representation on the floor of the House by like action of Congress. Has this House any legal right to annul the legislation giving to Utah an agent on the floor of the House any more than it has to annul the legislation admitting the Territory? And if not, has the House any legal right to keep out any agent the Territory may elect and return that has the qualifications of the Constitution made by Congress a part of the organic law of that Territory?

CERTAIN CONSTITUTIONAL PROVISIONS CONSIDERED.

And in this connection I am not here denying the right of the House to protect itself against men who from moral turpitude are unworthy of a seat in its halls. And that brings me to consider for a moment the proper construction to be given to the two clauses of the Constitution—one providing that the House shall be the judge of the election returns and qualifications of members, and the other clause enabling the House to expel a member by a two-thirds vote.

When a member presents his credentials and claims to be a member elect, the House exercises the exclusive jurisdiction granted by the first clause, and inquires is he duly elected? which is determined by ascertaining whether he secured a majority or plurality of votes. Is he duly returned? This is answered by examining the regularity of his credentials; and has he the constitutional qualifications? which is answered by inquiring, was he a citizen, was his age as required by the Constitution, and did he reside in the Territory he proposes to represent? After making these inquiries and finding all the facts in his favor and according to the constitutional requirements, the House cannot lawfully go on to inquire into his religion, morals, or even his crimes. He first takes his seat, and then he becomes subject to the expulsion of the House for crime, even a crime as undefined as one against the civilization of the nineteenth century. But another rule here obtains. When you charge a man with such tenets, principles, practices, and crimes as you assume makes him unworthy of a place in the membership of the House, you must convince two-thirds of the voting membership of the existence of an adequate reason for expulsion. This forms a protection against the unbridled power of a mere majority. If a crime of dark turpitude is clearly proved against a member, two-thirds can easily be found who will unite to drive him from the seat he has dishonored, but not so of a doubtful case or accusation.

This construction gives the proper effect to the two clauses of the Constitution, and are applicable alike to Representatives and Delegates. I conclude, therefore, that Cannon is entitled to a seat on the floor of the House; and it is a question for the determination of the House, and not of this committee, whether he should hereafter be expelled for the practice of polygamy or other alleged crime or misconduct on his part. That question is not now for this committee. It need not be determined till reached.

The House has the power and technical right, at least, to expel Cannon for the practice of bigamy by a two-thirds vote. It can do so without the violent and revolutionary assumption of power that is now necessary to deny him the seat, and without furnishing a precedent that will invite every disappointed contestant to attack the moral character of his adversary and scatter slander on every wind through the medium and machinery of a contest, real or pretended. Look well to the consequences before such a practice is invited.

MINORITY REPORT.

In the matter of George Q. Cannon, contestant, *vs.* Allen G. Campbell, contestee, from the Territory of Utah, and referred to the Committee on Elections of the Forty-seventh Congress, the said committee have had the same under consideration, and the undersigned, a part of said committee, make the following report, as expressing their views upon the matter submitted:

The Revised Statutes of the United States contain the following provision :

SEC. 1862. Every Territory shall have a right to send a Delegate to the House of Representatives of the United States, to serve during each Congress, who shall be elected by the voters in the Territory qualified to elect members of the legislative assembly thereof. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be given accordingly. Every such Delegate shall have a seat in the House of Representatives, with the right of debating, but not of voting.

Section 1844 of the Revised Statutes expressly requires "a record to be made" of all proceedings of the executive as follows:

The secretary shall record and preserve all laws and proceedings of the legislative assembly, and all the acts and proceedings of the governor in the executive department.

The Territorial law of Utah provides as follows:

SEC. 21. The clerk of the county court shall also, as soon as possible after the result of the election has been so determined, make out a general abstract thereof in triplicate, and certify to the correctness thereof, one of which he shall post up in his office, and forward to the secretary of the Territory a certified copy of the names of the persons voted for and the number of votes each has received for *Territorial offices*.

SEC. 22. As soon as all the returns are received by the secretary of the Territory he shall, in the presence of the governor, unseal and canvass the same, and make an abstract thereof, and the secretary shall within ten days thereafter, make out and transmit a certificate of election to each member of the legislature and Territorial officers elect.

In pursuance of these laws an election for Delegate of the Territory of Utah was held on the second Tuesday of November, 1880, and returns were made to the governor by the proper returning officer.

The votes or returns were canvassed in the presence of the governor and secretary, and thereupon the governor made the following decision :

DECISION OF THE GOVERNOR.

On the 14th day of December, 1880, the secretary of the Territory, in my presence, opened the returns received by mail of an election for Delegate of the Territory of Utah in the Forty-seventh Congress, held on the Tuesday after the first Monday of November, of said year.

The returns show that George Q. Cannon received 18,568 votes, and Allen G. Campbell received 1,357 votes. At that time notice of protest by Allen G. Campbell was given, which protest was afterwards filed, objecting to a certificate being issued to Mr. Cannon.

In addition to this statement of the governor, the answer of Campbell admits, and the other facts in the case show, that Cannon received 18,568 votes, and Campbell received 1,357 votes.

On this statement Cannon would be entitled to his seat unless it is shown that he is disqualified under the Constitution and the laws.

Mr. Cannon, in his notice of contest, makes this allegation among others, viz :

1. That the returns of the election of Delegate to the Forty-seventh Congress of the United States, held on the 2d day of November, 1880, in the several counties of the Territory of Utah, which were prepared and forwarded to the secretary of the Territory, under sections 23 and 24 of the compiled laws of the Territory of Utah, copies of which returns, marked respectively A, B, C, D, &c., are hereto annexed showing, as the fact was, that 18,568 votes were legally cast for me at said election, that only 1,357 votes were cast for you, and that only 8 votes were cast for all other candidates, and that I was therefore legally elected to said office of Delegate from the Territory of Utah in the Forty-seventh Congress, and was also entitled to receive the certificate of election, and to be enrolled and sworn as such Delegate.

This specification embraces the averments: (1) that the county returns for the several counties of the Territory were prepared and forwarded to the secretary according to law; (2) that copies of the returns were annexed to the notice of contest.

Now, what is Mr. Campbell's answer to this branch of the notice of contest (page 32 of the Record)?

"1. I admit that returns of the election of Delegate to the Forty-seventh Congress of the United States, held on the 2d day of November, 1880, in the several counties of the Territory of Utah, were made to the secretary of said Territory, of which copies are annexed to your notice and referred to therein as marked respectively A, B, C, D, &c., but I deny that said returns showed, or that the fact was, that 18,568 votes were legally cast for you at said election, or that you were legally or otherwise elected to said office of Delegate from the Territory of Utah in the Forty-seventh Congress, or entitled to receive the certificate of election, or to be enrolled, sworn, or otherwise in any manner recognized as such Delegate."

The admissions of Campbell by his answer, among other things, are that the county returns for the several counties of the Territory were made to the secretary, and that copies of those returns were annexed to the notice of contest, and particularly specifying them as Exhibits A, B, C, D, &c.

This is conclusive on the question of the state of the vote and dispenses with proof of that fact, and especially so if you apply the rule that a pleading is to be taken most strongly against the party pleading.

The exhibits referred to are set out in full in the record, and show the entire vote of the Territory by precincts and counties, and fully verify the statements of Mr. Cannon.

There is no proof or attempted proof to show that contestant did not receive the votes claimed by him, or that said votes were illegal. This fact, then, may be regarded as settled and beyond dispute.

The other grounds for disputing his seat are, first, that he was and is an unnaturalized alien; and, secondly, that he is a polygamist.

The question of naturalization, we think, is settled by the record and proof in the case beyond all doubt.

Upon this question we adopt the conclusions of the contestant, Mr. Cannon, as a fair statement of the facts, which are fully supported by the record, and are, in fact, a substantial transcript of it.

NATURALIZATION.

The following are the statutory provisions under which Mr. Cannon was naturalized:

"Any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:

"First. That he shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court of some one of the States, or of the Territorial districts of the United States, or a circuit court or district court of the United States, three years at least before his admission, that it was, *bona fide*, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly, by name, the prince, potentate, state, or sovereignty whereof such alien may, at the time, be a citizen or subject.

"Secondly. That he shall at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever, and particularly, by name, the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

"Thirdly. That the court, admitting such alien, *shall be satisfied* that he has resided within the United States five years at least, and within the State or Territory, where such court is at the time held, one year at least; and it shall further appear to their satisfaction that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same, provided that the oath of the applicant shall, in no case, be allowed to prove his residence." (2 Stat., 153.)

"Any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arriving at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he has arrived at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of the first section of the act to which this is in addition, three years previous to his admission; provided such alien shall make the declaration required therein at the time of his or her admission; and shall further declare, on oath, and prove to the satisfaction of the court, that for three years next preceding it has been the *bona fide* intention of such alien to become a citizen of the United States, and shall, in all other respects, comply with the laws in regard to naturalization." (4 Stat., 69.)

The last paragraph was enacted May 26, 1824; the others, April 14, 1802.

The record of the court is in these words:

United States first district court for the Territory of Utah.

"UNITED STATES OF AMERICA,

"Territory of Utah, Great Salt Lake County, ss:

"Be it remembered that on the seventh day of December, A. D. 1854, George Q. Cannon, a subject of Queen Victoria, made application and satisfied the court that he came to reside in the United States before he was eighteen years of age, and thereupon the said George Q. Cannon appeared in open court and was sworn in due form of law, and on his oath did say that for three years last past it has been his *bona fide* intention to become a citizen of the United States, and to renounce and abjure, forever, all allegiance and fidelity to every foreign prince, potentate, state, and sovereignty whatever. And thereupon, the court being satisfied by the oaths of Joseph Cain and Elias Smith, two citizens of the United States, that the said George Q. Cannon for one year last past has resided in this Territory, and for four years previous thereto he resided in the United States; that during that time he has behaved as a man of good moral character; that he is attached to the principles of the Constitution of the United States, and well disposed to the good order of the inhabitants thereof, admitted him to be a citizen of the same; and thereupon the said George Q. Cannon was in due form of law sworn to support the Constitution of the United States, and absolutely and entirely to renounce and abjure, forever, all allegiance and fidelity to every foreign prince, potentate, state, and sovereignty whatever, and particularly to Victoria, Queen of Great Britain and Ireland, whose subject he heretofore has been.

"In testimony whereof I have hereunto subscribed my name and affixed the seal of

H. Mis. 35—42

said court, this seventh day of December, one thousand eight hundred and fifty-four, and of the Independence of the United States the seventy-ninth.

"[L. S.]

W. I. APPLEBY,
Clerk."

The certificate of naturalization granted to Mr. Cannon is in the same form, with the exception that instead of the words "Queen Victoria," which appear in the second line of the record, the words "Victoria, Queen of Great Britain and Ireland," are used in the certificate. The certificate bears the seal of the first district court of Utah. The record does not.

The doctrine that the judgment of naturalization is conclusive on the question of residence, as upon all similar preliminary questions, is not only clear upon principle, but is well settled by the authorities, from which, to avoid repetition, full citations will be made at this point for use on other questions as well as that now under consideration.

In the case of *Campbell v. Gordon*, 6 Cranch, 176, the Supreme Court of the United States held as follows :

"In support of the first objection it is contended that, although the oath prescribed by the second section of the act of Congress entitled 'An act to establish a uniform rule of naturalization, and to repeal the act heretofore passed on that subject,' passed the 29th of January, 1795, was administered to the said William Currie, by a court of competent jurisdiction, still it does not appear by the certificate granted to him by the court, and appearing in the record, that he was by the judgment of the court, admitted a citizen, or that the court was satisfied that during the term of two years, mentioned in the same section, he had behaved as a man of good moral character, attached to the Constitution of the United States, and well disposed to the good order and happiness of the same.

"It is true that this requisite to his admission is not stated in the certificate; but it is the opinion of this court, that the court of Suffolk must have been satisfied as to the character of the applicant, or otherwise a certificate, that the oath prescribed by law had been taken, would not have been granted.

"It is unnecessary to decide whether, in the order of time, this satisfaction, as to the character of the applicant, must be first given, or whether it may not be required after the oath is administered, and, if not then given, whether a certificate of naturalization must not be withheld. But if the oath be administered, and nothing appears to the contrary, it may be presumed, that the court before whom the oath was taken, was satisfied as to the character of the applicant. The oath, when taken, confers upon him the rights of a citizen, and amounts to a judgment of the court for his admission to those rights. It is, therefore, the unanimous opinion of the court that William Currie was duly naturalized."

The certificate of naturalization, granted to Currie, and the record thereof, remaining in the clerk's office, were both in the following words:

"At a district court held at Suffolk, October the 14th, 1795, William Currie, late of Scotland, merchant, who hath immigrated into this commonwealth, this day, in open court, in order to entitle himself to the rights and privileges of a citizen, made oath that, for two years last past, he hath resided in and under the jurisdiction of the United States, and for one year, within this commonwealth, and also that he will support the Constitution of the United States, and absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, or other state, whatsoever, particularly to the King of Great Britain.

"A copy.—Teste :

"JOHN C. LITTLEPAGE."

In this case, an authenticated copy of the record of which is filed with the committee, the Supreme Court of the United States established the following doctrines:

1. The grant of a certificate of naturalization, showing that the oath of citizenship prescribed by law was taken, is conclusive proof that such oath was taken.
2. The grant of such a certificate is conclusive proof that the court was satisfied that the applicant had, during the period mentioned in the statute, behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.
3. The oath, when taken, confers upon the applicant the rights of a citizen, and amounts to a judgment of the court for his admission to those rights.
4. The fact that the record of naturalization remaining in the clerk's office does not expressly show that the applicant was admitted to citizenship, does not impair the conclusive effect of the certificate granted.
5. The fact that such record does not expressly show that any proof was made or adjudication had upon the question of good character, or of attachment to the principles of the Constitution, or of devotion to the welfare of the country, does not impair the conclusive effect of the certificate granted.

This doctrine of the conclusiveness of the certificate of naturalization is supported by the most cogent reasons. Applicants for naturalization in the United States are not generally well informed respecting our laws or the methods of our courts. If irregularity or error should creep into the record not one applicant in one hundred would be able to detect it, even if he had, as he has not, the right enjoyed in ordinary proceedings *inter partes* to be heard on the form of the record or the mode of its entry. He takes the certificate which the court gives him, and, in the faith that he is a citizen of the United States thenceforth through life, performs acts which, if his naturalization is invalid, are crimes, makes oaths which are unauthorized or false, bargains which are ruinous to others or to himself; exercises without right the functions of the juror in cases involving property, liberty, and even life; and holds offices in which he is a mere usurping interloper. The calamities to which the great body of our naturalized immigrants would be exposed if the validity of their naturalization should be made to depend upon the accuracy or regularity of the official work of clerks of courts would only be equaled by those to which other citizens would be subjected by the blameless but unlawful acts of men who, though citizens by reputation, were only foreigners in law.

In re Coleman, 15 Blatchf., 406, the court said :

"The main question discussed on the hearing of the writ was whether the certificate of citizenship which Coleman used was unlawfully issued. It was contended by the attorney for the United States that the certificate was unlawfully issued, because there was no matter of record in the superior court on which to found it; and that what has been found in and produced from the books and files of that court does not constitute a record of the naturalization of Coleman. * * *

"It is hardly to be supposed that Congress intended to make the applicant for citizenship responsible for a non-compliance with any other conditions than such as he had the power to comply with. The applicant can declare his intention, and can take the prescribed oath and make the renunciation. But he cannot see to it that the proceedings and renunciation are recorded. He can produce a witness as to his residence and character, and can appear, in person, in the proper court, and be sworn there in open court, with his witness as to the matters prescribed in the statute. When this is done, he can do nothing more, except to receive such a certificate from the court as that which Coleman received from the court—a certificate which sets forth that it is given by the court, under its seal; that Coleman appeared in the court, on a day named, and applied to it to become a citizen, and produced to it such evidence and made such declaration and renunciation, and took such oaths as are required by the acts of Congress on the subject; and that, thereupon, the court ordered that he be admitted, and he was accordingly admitted by the court, to be a citizen of the United States. When he has done what the certificate says he has done, and when he leaves with the clerk of the court such papers as he has signed, and when the court tells him, as it does by the certificate, that, he having done all that, the court had thereupon ordered that he be admitted to be a citizen, and when the court gives the certificate into his keeping, he has done all he can to comply with the statute. * * *

"As said before, there must be an act of admission by the court. But the court has a right to say what it will regard as its order that the applicant be admitted, and what it will regard as his admission. Whatever the court says is its act of admission, and whatever the court says is its order of admission, is such act and such order, whenever the question is brought up in a collateral proceeding, provided there is sufficient to reasonably amount to such act and such order. Here the superior court has said to Coleman by the certificate that he has complied with all the requirements of the statute, and that it has made an order thereupon that he be admitted to be a citizen, and that it has admitted him to be a citizen. * * *

"The fact that there is no record in the court of any order directing the establishment and keeping of the volumes containing entries of naturalizations between 1858 and 1874 is of no consequence. The very keeping of them for so long a period is equivalent to an order that they be kept, and the absence of any order or practice, during that period, as to any other form of order of admission or record of admission, shows that what was kept and done is to be regarded as a record and as the record."

In Spratt v. Spratt (4 Pet., 393), the court held as follows :

"As James Spratt arrived within the United States after the passage of the act of 1802, he is embraced by the second section of that act, and was under the necessity of reporting himself to the clerk, as that section requires. Must this report be made five years before he can be admitted as a citizen ?

"The law does not in terms require it. The third condition of the first section provides that the court admitting such alien shall be satisfied that he has resided within the United States five years at least, but does not prescribe the testimony which shall be satisfactory. This section was in force when James Spratt was admitted to become a citizen, and was applicable to his case. But the second section requires, in addition, that he shall report himself in the manner prescribed by that section; and requires that such report shall be exhibited 'on his application to be naturalized, as

evidence of the time of his arrival within the United States.' The law does not say that this report shall be the sole evidence, nor does it require that the alien shall report himself within any limited time after his arrival. Five years may intervene between his arrival and report, and yet the report will be valid. The report is undoubtedly conclusive evidence of the arrival, and must be so received by the court, but if the law intended to make it the only admissible evidence, and to exclude the proof which had been held sufficient, that intention ought to have been expressed. Yet the inference is very strong from the language of the act, that the time of the arrival must be proved by this report, and that a court about to admit an alien to the rights of citizenship, ought to require its production.

"But is it anything more than evidence which ought indeed to be required to satisfy the judgment of the court, but the want of which cannot annul that judgment? The judgment has been rendered in a form which is unexceptionable. Can we look behind it, and inquire on what testimony it was produced?

"The act does not require that the report shall be mentioned in the judgment of the court, or shall form a part of the certificate of citizenship. The judgment and certificate are valid, though they do not allude to it. This furnishes reason for the opinion that the act directed this report as evidence for the court, but did not mean that the act of admitting the alien to become a citizen should be subject to revision at all times afterwards, and to be declared a nullity if the report of arrival should not have been made five years previous to such admission. * * * The various acts upon the subject submit the decision on the right of aliens to admission as citizens to courts of record. They are to receive testimony, to compare it with the law, and to judge on both law and fact. This judgment is entered on record as the judgment of the court. It seems to us, if it be in legal form, to close all inquiry, and, like every other judgment, to be complete evidence of its own validity."

In *Ritchie v. Putnam* (13 Wend., 524) the court said:

"It need not appear by the record that all the preliminary requisites to a naturalization were complied with. The judgment of the court admitting the alien to become a citizen is conclusive evidence upon that point."

In *McCarthy v. Marsh* (1 Seld., 263) the court held:

"The second question is whether the respondent was lawfully admitted a citizen of the United States by the court of common pleas of Saratoga County at the August term thereof, 1834, and this resolves itself into a question of evidence.

"The respondent produced the record of his admission, which was in due form and according to law. The appellants claimed that this was not sufficient, and that the respondent was bound to go farther, and prove that he had in due form of law, more than two years before his admission, declared his intention to become a citizen of the United States, insisting that such declaration was a condition precedent, with which the respondent must show he had complied; and the appellants further claimed that notwithstanding it was stated in the record that it appeared to the court that the respondent had more than two years before declared in due form of law his intention to become a citizen, yet that fact was open to inquiry, and they proceeded to give proof rendering it somewhat doubtful whether the respondent ever had declared his intention in due form of law.

"The simple question then is, whether the record is conclusive evidence of the fact that a prior declaration of intention was made in due form of law. The weight of authority is decidedly in the affirmative. (Authorities cited.)

"These authorities accord with the general principle that a record of the proceedings and judgment of a court of competent jurisdiction is conclusive evidence of the facts appearing therein. All courts look with favor upon proceedings to admit aliens to citizenship, and it is just that they should; for the want of acquaintance with our laws and judicial proceedings, the unsettledness of their residences in general for some years, and the consequent liability to lose their documents and papers, should shield them from technical and sharp objections to their naturalization papers whenever there appears to have been an honest intention to become a citizen and comply with the laws of our country."

In *Priest v. Cummings* (16 Wend., 616) the court said:

"As to the second objection, the act requires that the court shall be satisfied that the applicant sustains a good moral character, &c., in addition to his residence; but it does not prescribe the kind of testimony to be received, except that his own oath shall not be taken to prove his residence. Beyond this, the species and amount of proof rest entirely in the discretion of the court."

In *State v. Penny* (10 Ark., 616) the attorney-general took this position:

"The judgment of the court admitting him as a citizen is not conclusive, and the regularity of the proceedings may be inquired into."

In reply the attorney for the defendant said:

"It is well settled that the judgment of the court admitting the alien to become a citizen is conclusive proof that the prerequisites of the law have been complied with, and it need not appear by the record of naturalization."

The court held :

"Until reversed, the judgment rendered, as shown by the transcript, is conclusive of its own validity, and closes the door behind it to all inquiry."

There were some other statements made by Contestee Campbell relating to other matters connected with Mr. Cannon's naturalization, but they were of so frivolous a character that no further consideration of them is deemed necessary.

We think the judgment of naturalization and the certificate issued thereon is conclusive.

POLYGAMY.

The grave and important question as to whether polygamy is a disqualification for the office of Delegate from the Territories we think is settled by the Constitution, the laws, and the uniform practice of the Government since its formation, now nearly one hundred years.

As to who shall hold seats in Congress, there are two distinct provisions of the Constitution :

Section 5, Article I of the Constitution is as follows :

Each House shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business. * * *

This provision in its operation requires only a majority vote.

Such has been the general practice of the House.

The other provision is, "Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member." (Second clause, section 5, Article I.)

The qualifications of Representatives are prescribed by the second section of the first article of the Constitution : They shall be twenty-five years of age, seven years a citizen of the United States, and, when elected, be inhabitants of the State in which they shall be chosen.

This committee is to report upon "the *prima facie* right or the final right of the claimants to the seat as the committee shall deem proper."

It must be conceded, as we have seen, that Cannon has an overwhelming majority of the votes cast for Delegate to Congress.

We think, also, it must be conceded, from the facts evidenced in the case by the record, that Cannon possesses the Constitutional qualifications prescribed by second section of Article I of the Constitution.

Mr. Cannon, at the time of his election, was over twenty-five years of age, had been seven years a citizen of the United States, and was an inhabitant of the Territory in which he was chosen. These are the only qualifications to be considered.

There is no power, State or Federal, under the Constitution by which these qualifications can be changed, enlarged, or modified in any manner.

The authorities upon this question are all one way.

In the report of the Committee on Elections of the House in the Forty-third Congress, in the case of Maxwell against Cannon, and upon this point, the committee say :

The practice of the House has been so uniform and seems so entirely in harmony with the letter of the Constitution that the committee can but regard the jurisdictional question as a bar to the consideration of qualifications other than those above specified.

This is the rule we think should be applied to the case before the House.

The following are some of the authorities on this point : Story on the

Constitution, sections 625-627; the contested-election cases of *Fouk vs. Trumbull* and *Turney vs. Marshall* from the State of Illinois (1 Bartlett, 168; McCrary, Election Laws, sections 227, 228, 252; *Donnelly vs. Washburn*, Forty-sixth Congress; the case of *Wittemore* in Forty-first Congress; the case of *Matteson* in the Thirty-fifth Congress; the case of *Benjamin G. Harris*, are all in point.

But it is said that it may be conceded that the rule above stated as to the power of the House relating to members is correct, but that a Delegate from the Territories is not a constitutional officer, and does not as to qualification stand upon the same ground as a member from a State, and that the constitutional provision does not apply to a Delegate; that he is a nondescript, and has no right and can claim no protection under the Constitution.

So far as our research has extended since the formation of the Government we can find no case reported that makes any distinction between the qualifications of a member from a State and a Delegate from the Territory.

Whenever that question has arisen the rule as to qualifications has been the constitutional provision, and this has been applied to the Delegates from the Territories. The case of *James White*, decided in 1794, is not an exception.

It may be that in express terms the Constitution does not apply to Territories; but the spirit and reason of the Constitution does apply and establishes a proper standard.

If the constitutional standard is not adopted as to qualifications, then there is no rule for the government of the House as to Delegates.

The House at this session may establish one rule, and the next session may revoke or establish another and different one, and the right of a Delegate would be wholly uncertain.

There are laws that have been passed by Congress touching this subject that give color to the views we present. These laws show that a Delegate, except as to a vote in the House, is put upon the same footing as a member from a State.

Besides, there has always been the same practice from the formation of the Government as to Delegates and members by referring their cases to the Committee on Elections, both being treated alike in this respect.

The time, manner, and places of elections of members of Congress, including Delegates from the Territories, are prescribed and made the same by 14 U. S. Stat., sections 25, 26, and 27.

By section 30, Revised Statutes, the oath of office of members of Congress and Delegates from the Territories is prescribed, and is the same for a Delegate as a member.

It is important to remark that this statute was passed June 1, 1789, and has ever since been the law.

Section 35, Revised Statutes, provides that members and Delegates are to be paid the same salary.

Section 51 provides that vacancies in the case of Delegates are to be filled in the same way as in case of members.

The organic law for Utah, September, 1850, provides:

That the Constitution and laws of the United States are hereby extended over and declared to be in force in said Territory of Utah, so far as the same or any provision thereof may be applicable.

This is a law of Congress passed by virtue of the Constitution, and is binding on Congress until repealed.

Now, why is the provision of the Constitution relating to qualification of members not applicable to the Territories? What reason can be given

why it should not apply? What better standard for qualification can be made?

The adoption of the rule establishes uniformity and certainty, the operation is salutary, and its adoption since the formation of the Government demonstrates its advantages and necessity.

The argument is made that a Delegate is not a constitutional officer, and, therefore, not a member of the House in the sense of the Constitution, and that the House may seat or unseat a Delegate at will.

We believe this is the first time since the formation of the Government that this argument has been advanced.

If a Delegate from a Territory is not a member by virtue of the Constitution and laws, then what rule or law do you apply to him? Is it the arbitrary will or caprice of the House at each session?

If, as is said, a Delegate is not a member, certainly you cannot invoke any provision of the Constitution as to qualification or expulsion.

The constitutional rule wholly fails upon this theory.

It would follow from this view that the constitutional right of the House to judge of the election, returns, and qualifications of its members does not apply to Delegates, and therefore the House is without constitutional power in the premises, and that whatever power the House possesses as to Delegates, it must be derived from some other source.

The extraordinary and dangerous doctrine is advanced by the majority of the committee—

That the Delegates sit in the lower House by its grace and permission, and it makes no difference whether that permission is expressed in a statute or mere resolution of the House.

The House can at any time *disregard* it and *refuse* to be bound by it.

It [Congress] cannot affix a qualification by law for a Delegate and bind any House except the one assenting thereto. Congress cannot bind the House by any law as to the qualification of a Delegate.

Our opinion is that it is competent for Congress, by a proper statute, to provide for the election in the Territories of Delegates to Congress, under Article IV, section 3, clause 2:

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

It has been decided under this article of the Constitution a great many times that it gives Congress the right to legislate for the Territories, and to make such laws and rules as may be for the advantage of the Territories and of the country.

Now, under this clause of the Constitution, if in the opinion of Congress, in making needful rules and regulations respecting the Territories, it should be necessary to provide for the election of a Delegate from said Territory to this House, and Congress should so provide that said Delegate should have a seat and the right to debate, could the House alone nullify that law and refuse to seat the Delegate?

Why is not the House bound by constitutional laws? What right has the House to nullify and refuse to obey a law it has helped to make?

We have already referred to various laws of Congress making express provisions for the election of Delegates from the Territories, giving them a right to a seat in the House, and generally applying the same rules to Delegates as members, except Delegates have not the right to vote.

Also, as we have seen, the organic law of Utah adopts the Constitution and laws of the United States, so far as applicable, as a part of that organic law.

Also, sec. 1891, Revised Statutes, gives the Constitution and laws force and effect in all the Territories, so far as applicable.

The law-making department of the Government has made these various laws in a constitutional way, and until repealed they are binding upon every individual in the land and every department of the Government, including Congress. No one is above the laws in this country.

Certainly one House alone cannot repeal a law of Congress nor nullify it by any direct or indirect proceeding. It is absolutely bound by the law.

If Congress has the right to make a law and provide for the election of Delegates to this House, and if the constitutional qualifications do not apply to them, and there is no statute fixing their qualifications, it would seem to follow that the House would be bound to admit as a Delegate under the law such persons as the people of the Territory might elect to represent them, however obnoxious they might be to the House. The people of the Territory being satisfied, no one else can complain.

Suppose Congress should pass a law providing that Cabinet officers should be allowed seats in the House, with the privilege of answering questions put to them relating to the Executive Department, and the other Departments of which they were chief, and with the right to debate.

Then, could the House refuse to permit these officers seats and the privileges accorded to them under the law?

Could the House refuse them a seat on the ground that they were not qualified, and set up some fanciful standard of qualifications not prescribed by the statute?

Could the House exclude them under the law upon the ground that they were heretics, or Mormons, or polygamists—Catholics, Democrats, Republicans, or Greenbackers?

Would not the House be bound to obey the law that had been made by Congress and permit the Cabinet to seats, however offensive they might be personally?

The logic of the majority of the committee is that one House alone could nullify the law and exclude *ad libitum*.

In the Forty-third Congress, in the case of *Maxwell vs. Cannon*, precisely the same question was involved in that case as in the one before the committee.

The question was stated this way:

That George Q. Cannon is not qualified to represent said Territory or to hold his seat in the Forty-third Congress, for the reason, as shown by the evidence, that he, on and before the day of the election in August, 1872, was openly living and cohabiting with four women, as his wives, in Salt Lake City, in Utah Territory, and he is still living and cohabiting with them.

On the question of qualifications, and the effect of making the Constitution a part of the law by act of Congress, the committee say:

It being conceded that the contestee has these qualifications, one other inquiry only under this head remains, to wit: Does the same rule apply in considering the case of a Delegate as of a member of this House? This question seems not to have been raised heretofore. The act organizing the Territory of Utah, approved September 9, 1850, enacts that the Constitution and laws of the United States are hereby extended over, and declared to be in force in, said Territory of Utah, so far as the same, or any provision thereof, may be applicable. It was said, on the argument, that the Constitution cannot be extended over the Territories by act of Congress, and the views of Mr. Webster were quoted in support of this position.

We do not deem it necessary to consider that question, because it will not be denied that Congress had the power to make the Constitution a part of the statutory law of the Territory as much as any portion of the organic act thereof. For the purposes of this inquiry it makes no difference whether the Constitution is to be treated as consti-

tutional or statutory law. If either, it is entitled to be considered in disposing of this case.

Upon this point there does not seem to have been any difference of opinion in the committee.

The committee in the same case, referring to the question of polygamy, say :

The question raised in the specification of contestant's counsel, and above transcribed, is a grave one, and unquestionably demands the consideration of the House. This committee, while having no desire to shrink from its investigation, finds itself confronted with the question of jurisdiction under the order referring the case.

The Committee on Elections was organized under and pursuant to article 1, section 5, of the Constitution, which declares: "Each House shall be the judge of the elections, returns, and qualifications of its own members." The first standing committee appointed by the House of Representatives was the Committee on Elections. It was chosen by ballot, on the 13th day of April, 1789; and from that time to this, in the vast multitude of cases considered by it, with a few unimportant exceptions, in which the point seems to have escaped notice, the range of its inquiry has been limited to the execution of the power conferred by the above provision of the Constitution.

What are the qualifications here mentioned and referred to the Committee on Elections? Clearly, the constitutional qualifications, to wit, that the claimant shall have attained the age of twenty-five years, been seven years a citizen of the United States, and shall be an inhabitant of the State in which he shall be chosen. The practice of the House has been so uniform, and seems so entirely in harmony with the letter of the Constitution, that the committee can but regard the jurisdictional question as a bar to the consideration of qualifications other than those above specified, mentioned in the notice of contest, and hereinbefore alluded to.

We conclude that the question submitted to us, under the order of the House, comes within the same principles of jurisdiction as if the contestee were a member, instead of a Delegate.

The minority said :

It is admitted in the report, and the fact has not been and is not denied, that Mr. Cannon possesses the constitutional qualifications, unless the qualifications of a Delegate in Congress from a Territory differ from the qualifications fixed by the Constitution for a member of the House. There can be no sufficient reason assigned for the position that the qualifications are any different. * * * The line of demarkation between these two great powers of the House, the power to judge of the elections, returns, and qualifications of its own members, by a mere majority vote, and the power to expel its members by a two-thirds vote, is clear and well defined.

The "views" of the minority on the point were further expressed in these words:

But a graver question than those we have considered is the question whether the House ought, as a matter of policy, or to establish a precedent, to expel either a Delegate or member on account of alleged crimes or immoral practices, unconnected with their duties or obligations as members or Delegates, when the member or Delegate possesses all the qualifications to entitle him to his seat.

If we are to go into the question of the moral fitness of a member to occupy a seat in the House, where will the inquiry stop? What standard shall we fix in determining what is and what is not sufficient cause for expulsion? If a number of members engage in the practice of gaming for money or other valuable thing, or are accused of violating the marital vow by intimate association with four women, three of whom are not lawful wives, or are charged with any other offense, and a majority of the House, or even two-thirds, expel them, it may be the recognition of a dangerous power and policy. If exercised and adopted by one political party to accomplish partisan ends, it furnishes a precedent which it will be insisted justifies similar action by the opposite party, when they have a majority or a two-thirds majority in the House; and thus the people are deprived of representation, and their Representatives, possessing the necessary qualifications, are expelled for causes outside of the constitutional qualifications of members, or those which a Delegate must possess, so far as his qualifications are fixed by reason or analogy, or are drawn from the principles of our representative system of government.

It may be stated that the reports, both of the majority and minority, were made by Republicans.

That is a precedent that covers the case before this committee in every particular. It was exhaustively discussed in the committee and

in the House, and was adopted by the House by an overwhelming majority, and it stands to-day as the rule and law of the House, unless it shall be reversed.

The issue in that case was sharply made, and the rule established that Delegates from Territories are entitled to the benefit of the constitutional limitations as to qualifications, and that polygamy was not a disqualification.

Now, if the rule that has been established and practiced since the formation of the Government as to qualification for members and Delegates to the House is to be reversed and a different rule adopted, what standard shall it be?

This House may exclude a member on a charge of polygamy. The next House may exclude a person elected because he is a heretic or a Catholic or a Methodist, or because he had been charged by his opponent with adultery or some other offense.

Everyone can see that such a rule or license would be dangerous to the rights and liberties of the citizens and an end to republican government.

The party in power would be governed by arbitrary will and caprice alone.

Mr. Cannon, the contestant here, claims in good faith that polygamy is a religious conviction and principle with him and his people, and in this he is entitled to protection under the Constitution.

The people he represents have elected him and are satisfied with him, and this House should be content.

The sixth article of the Constitution provides that—

No religious test shall ever be required as a qualification for any office of public trust under the United States.

It seems to us that the contestant is entitled to the above provision of the Constitution as a protection. He has been convicted of no crime and there is no law on the statute book that disqualifies him as a Delegate.

IS MR. CAMPBELL ENTITLED TO A SEAT?

Mr. Campbell insists that although he may be a minority candidate, Mr. Cannon's ineligibility entitles him to the seat. If there are any questions settled beyond the reach of argument this is one of them.

In the case of *Maxwell v. Cannon* (Smith, 182) the Committee of Elections say:

The contestant insists upon his right to the seat as the minority candidate, in case the House shall ultimately determine to unseat or expel the sitting member. The counsel for the contestant referred the committee to the case of *A. S. Wallace v. W. O. Simpson*, in the Forty-first Congress, in support of the claim of contestant. A critical examination of the case will show that it cannot be considered as authority for the doctrine. * * * Not only is this not an authority for the doctrine contended for, but the cases establishing the opposite doctrine are so numerous and uniform as to absolutely remove the question in this country from the realm of debate.

The committee cite the following cases: *Smith v. Brown* (2 Bartlett, 395); *Ramsey v. Smith* (Clarke & Hall, 23); *Albert Gallatin*, Senate, 1793; *Philip B. Key*, House, 1807; *John Bailey*, House, 1824; *James Shields*, Senate, 1849; *J. Y. Brown*, House, 1859; *Cushing's Treatise*; *Zeigler v. Rice* (2 Bartlett, 884); *Simeon Corley*, P. M. B. Young, Nelson Tift, and R. B. Butler, House, Forty-third Congress; *F. E. Shober*, House, Forty-first Congress, and *J. C. Abbott*, Senate, Forty-second Congress.

Our conclusions are that Cannon had a clear majority of the legal votes for Delegate.

That he possesses the necessary qualifications under the Constitution and laws.

That he is entitled to the seat, and we recommend the following resolution for the consideration of the House:

Resolved, That George Q. Cannon was duly elected and returned as Delegate from the Territory of Utah, and is entitled to a seat as Delegate in the Forty-seventh Congress.

S. W. MOULTON.
GIBSON AHERTON.
L. H. DAVIS.
G. W. JONES.

JOHN T. STOVELL vs. GEORGE C. CABELL.

FIFTH CONGRESSIONAL DISTRICT OF VIRGINIA.

Held, That depositions on behalf of contestant, relating to irregularities at precincts not mentioned in the notice of contest, and which were objected to by contestee for that reason, are inadmissible.

There is no statute of Virginia which forbids the use of two ballot-boxes, one for white and one for colored voters; and their use did not interfere with the purity, freedom, or convenience of the election.

Even if one of the judges of election placed the ballot of a voter in his pocket, and not into the ballot-box (which was not proven), that fact would not authorize the rejection of the vote of the precinct.

Depositions taken before a county clerk, and objected to at the time, are not admissible, because he had no authority to take them.

The House adopts the report.

JULY 18, 1882.—Mr. AHERTON, from the Committee on Elections, submitted the following

REPORT:

Your committee, having had under consideration the contest for a seat in the House of Representatives from the fifth Congressional district of Virginia, submit the following report :

The parties to the contest are John T. Stovall, who was the candidate upon the ticket known as the Readjuster ticket, and George C. Cabell, who was the Democratic candidate. This district is composed of the counties of Halifax, Pittsylvania, Henry, Franklin, Patrick, Floyd, Carroll, and Grayson, and the town of Danville.

The official returns made under the laws of Virginia to the office of the secretary of the commonwealth, and duly canvassed by the State board of canvassers on the fourth Monday of November, 1880, show (11,778) eleven thousand seven hundred and seventy-eight votes for George C. Cabell, and (10,919) ten thousand nine hundred and nineteen votes for John T. Stovall, or a majority of 859 votes for the contestee Cabell.

The detailed statement of the vote is as follows:

Statement of the whole number of votes cast in the counties and corporations forming the fifth Congressional district of Virginia, in an election for a Representative in the Congress of the United States held pursuant to law the first Tuesday after the first Monday in November, 1880.

| | George C. Cabell. | John T. Stovall. | Tony Sto- vall. | T. Stovall | Beverly A. Davis. |
|---------------------|----------------------|---------------------|--------------------|------------|----------------------|
| Halifax..... | 1,839 | 2,179 | ..... | ..... | ..... |
| Pittsylvania..... | 3,176 | 2,772 | ..... | ..... | ..... |
| Henry..... | 725 | 1,191 | ..... | ..... | ..... |
| Franklin..... | 1,778 | 1,464 | ..... | ..... | 1 |
| Patrick..... | 769 | 750 | ..... | ..... | ..... |
| Floyd..... | 692 | 605 | ..... | ..... | ..... |
| Carroll..... | 1,160 | 494 | ..... | ..... | ..... |
| Grayson..... | 761 | 783 | ..... | ..... | ..... |
| Danville..... | 731 | 585 | 1 | 1 | ..... |
| North Danville..... | 147 | 95 | ..... | ..... | ..... |
| | 11,778 | 10,919 | 1 | 1 | 1 |

We, the undersigned, a board of State canvassers, do hereby certify that the foregoing statement is correct.

FRED. W. M. HOLLIDAY,
Governor.

T. T. FAUNTLEROY,
Secretary of the Common'lh.

JOHN E. MASSEY,
Auditor of Public Accounts.

C. M. REYNOLDS,
State Treasurer.

JAS. G. FIELD,
Attorney-General.

The contestant does not claim in his notice of contest that he was elected a Representative to the Forty-seventh Congress, but that he would have been elected but for certain wrongs of which he complains. To all of contestant's allegations the contestee interposed a general as well as a specific and particular denial and challenged the proof.

The contestant has not attempted to substantiate by proof any of the grounds of contest specified in his notice except such as relate to the precincts of Danville, Cascade, Brosville, Hall's Cross-Roads, and Ringgold, in the county of Pittsylvania; Charity and Gates's Store, in Patrick County; and Hillsville and Dalton's Store, in the county of Carroll.

He has offered some testimony, which has been duly considered, relating to the precinct of Phillips's Store, Nester's, Fancy Gap, and Smith's Mill, in Carroll County. But these precincts are not mentioned in the notice of contest, and the depositions relating to them were objected to for that reason by the contestee, and are inadmissible. Besides, the depositions were, in disregard of the contestant's objections, taken in Carroll County by a Pittsylvania County notary, who had no authority, under State or Federal law, to take them.

If all the demands made by the contestant in his notice of contest respecting the precincts to which his proofs relate be conceded, the result will be as follows:

G. C. CABELL.

| | |
|---------------------|--------|
| Returned vote | 11,778 |
| Add Charity | 20 |
| | 11,798 |

Deduct.

| | |
|--------------------------|--------|
| Danville..... | 731 |
| Hall's Cross-Roads | 196 |
| Cascade | 127 |
| Ringgold | 242 |
| Brosville | 167 |
| Gates's Store..... | 80 |
| Hillsville | 77 |
| Dalton's Store | 120 |
| | 1,573 |
| | 10,225 |

J. T. STOVALL.

| | |
|---------------------|--------|
| Returned vote | 10,919 |
| Add Charity..... | 51 |
| | 10,970 |

Deduct.

| | |
|-------------------------|-------|
| Danville..... | 585 |
| Hall's Cross-Roads..... | 143 |
| Cascade | 79 |
| Ringgold | 238 |
| Brosville..... | 42 |
| Gates's Store..... | 37 |
| Hillsville | 37 |
| Dalton's Store | 7 |
| | 1,126 |
| | 9,844 |

Majority for G. C. Cabell, 381.

Moreover, if instead of rejecting the entire vote of Danville, where the contestee received a majority of 156 votes, we add to the contestant's vote the 550 ballots which, in some extraordinary manner, he claims in his brief, but not in his notice of contest, should have been excluded on account of double registration, the contestee would still have a majority?

We will examine as to some of the testimony in the order presented.

DANVILLE, PITTSYLVANIA COUNTY.

What changes, if any, are to be made in favor of the contestant in the returned vote of the town of Danville?

The contestant charges that he was deprived of five hundred votes in that town by the deliberate and arbitrary misconduct of persons acting in the interest of the contestee, with the purpose of defrauding or depriving the contestant of such votes. Under this general charge he makes four different specifications.

1. He asserts that an organization of the contestee's political friends, known as the Hancock and English Club of Danville, by systematic threats and menaces of proscription in business and in social relations against the contestant's supporters, intimidated a large number of voters in that town and deterred them from voting for the contestant.

2. He alleges that at a meeting of the Danville Tobacco Association resolutions were submitted, before the day of the election, to the effect that members of that association would not bid on tobacco offered for sale at public auction on the Danville market by any person whose

avowed purpose it was to vote for the contestant; and that, although these resolutions were not adopted by the association, they were acted on, not only by its members in their refusal to bid on tobacco so offered, but also by the association itself in the removal of one of its supervisors of public sales because of his persistence in supporting the contestant.

3. He asserts that the judges of election and challengers, with the aid of many members of this Hancock and English Club, who, acting in concert as friends of the contestee, formed a barrier in front of the polls, deprived three hundred colored supporters of the contestant of the opportunity to vote, by the following devices:

(1.) By means of this barrier formed by the contestee's friends in front of the polls the colored supporters of the contestant were excluded from the polls for some time in the morning, after the opening of the polls had been delayed for a considerable period beyond the hour fixed by law.

(2.) These voters were then kept waiting while the judges and challengers consumed the time in asking them unnecessary and silly questions, for the purpose of defeating their efforts to vote for the contestant.

(3.) Meantime the friends of the contestee were permitted to approach the polls by an entrance at the rear of the building, and to vote rapidly, without challenge.

(4.) The judges and challengers, with the aid of a police force friendly to the contestee, compelled the contestant's supporters to approach the polls singly or in couples.

(5.) The judges and challengers required supporters of the contestant, whom they knew to be regularly registered and to be entitled to vote, and who held their tax-receipts in their hands, to procure at other precincts certificates that they were not registered or had not voted there.

(6.) The judges of election required supporters of the contestant, who had recently attained the age of twenty-one years, to produce their fathers or mothers, or to do some other impracticable thing, to prove their age, instead of accepting their own oaths, as required by law.

(7.) Meantime the judges of election were receiving votes from the supporters of the contestee as rapidly as possible—in some cases from those not entitled to vote.

4. He alleges that one of the supervisors of election, in the town of Danville, some days before the election, took possession of the registration books, and kept them in his possession, so as to hinder, delay, and prevent transfers of registration to other places, to which voters had removed.

The contestant has examined several witnesses, whose testimony, if it were uncontradicted, would slightly tend to establish some of his numerous averments relating to the Court-House precinct and the Grave's Warehouse precinct, in the town of Danville. And yet two-thirds of the contestant's witnesses, who testify that access to the polls was difficult, state that they were crowded off, not by white but by colored men.

But the testimony of all these witnesses sworn for the contestant on the points now under consideration is successfully met and wholly contradicted by that of the witnesses produced on behalf of the contestee. Contestee, beyond all question, is entitled to his majority in Danville.

HALL'S CROSS-ROADS, PITTSYLVANIA COUNTY.

The contestant asserts, (1) that the votes of many legal voters, who

were supporters of the contestant, were rejected at the precinct of Hall's Cross-Roads, in Pittsylvania County, although they held their tax receipts in their hands when they offered to vote; (2) that the votes of many others were rejected because their registration had been transferred to Malmaison instead of Hall's Cross-Roads, although these two names were, and were known to the judges to be, different names for the same precinct; and (3) that separate boxes were used at this precinct to receive the ballots of white and colored men; and he demands the rejection of the returns of this precinct as fraudulent.

On the first of these points the contestant offers no proof. On the second he presents the testimony of four witnesses tending to show that two votes had been rejected for the reason assigned in the notice of contest, and two for other reasons. But the contestee presents the testimony of twelve witnesses who show that the four votes were rejected because the men who offered them had not been registered according to law, or had not been properly transferred; that no discrimination was made between the voters; that the same questions were propounded to every man, white and colored, in regard to his qualifications; that no voter of either party or color was improperly refused or needlessly impeded in the exercise of his privilege; that the election was conducted with perfect impartiality, and that the contestant's principal witness, on more than one occasion and to several persons, admitted its fairness.

The testimony shows that two boxes had been used since the period of reconstruction, without objection from any source.

There is no statute which expressly, or by necessary implication, forbids the use of two boxes in that way. The only question is whether their use interfered with the purity, freedom, or convenience of the election. That it did not is incontestably proven by the testimony.

CASCADE PRECINCT, COUNTY OF PITTSYLVANIA.

The contestant insists that the returns from the precinct of Cascade, in the county of Pittsylvania, are to be rejected, because one of the judges of election was detected in the act of substituting ballots in favor of the contestee in place of ballots delivered to him in favor of the contestant.

In support of this claim he offers the deposition of a witness, who says:

Q. 3. Did you see on that day any one of the judges of election suppress a colored voter's ballot and substitute in the place of it another ballot which the colored voter had not given him? If you did, give the name of the judge who did so, and relate the occurrence fully.

(Objected to as suggestive.)

A. Yes, sir; Mr. James E. Adams was the judge who did it. I saw a colored man give Mr. Adams his vote and Mr. Adams held it in hand and changed it for a Democratic ticket, and put the Democratic ticket in the ballot-box.

Q. 4. What was the name of the colored voter?—A. I don't know what his name was.

Q. 5. Did you make any outcry about it at the time? State what you did and said about it.—A. Yes, sir. Mr. Adams handed the Democratic ticket to Mr. Earles to put in the box, and I said then to them, "That ticket is not voted." Mr. Earles then said, "You are too late," and let loose the ticket, and shoved it down into the ballot-box.

This statement is disproved by the testimony of four witnesses, two of whom testify as follows:

JAMES E. ADAMS:

Q. Jesse Strange, one of the supervisors of election at Cascade, has stated, in a deposition given in this cause, that you, James E. Adams, took a ticket from a colored voter and substituted for it a Democratic ticket, and that Mr. Earles dropped it

in the box instead of the ticket handed in by the colored voter. Is that statement true or not?—A. It is not true; nothing of the kind occurred.

U. W. EARLES:

Q. Were you present on the 2d day of November, 1880, at the election held on that day at Cascade? If yes, what connection, if any, had you with the election?—A. I was present on said day, and was one of the judges of the election.

Q. Was that election fairly conducted, and all persons legally entitled allowed to vote?—A. The said election was fairly conducted, and all persons legally entitled allowed to vote.

Q. Jesse Strange, one of the supervisors of election at Cascade precinct on said day, has stated in a deposition given in this cause that James E. Adams, one of the judges, took a colored man's ballot and substituted for it a Democratic ticket and handed it to you, and that you put it in the ballot-box. Is that true or not?—A. It is not true.

RINGGOLD PRECINCT, PITTSYLVANIA COUNTY.

The contestant demands the rejection of the returns of the precinct of Ringgold, in the county of Pittsylvania, on the grounds (1) that separate ballot-boxes were used for white and colored voters; (2) that many votes offered for the contestant were rejected by the judges of election on the pretext that the voters had not personally paid their capitation tax, which pretext, he says, was furnished by the peculiar form in which the county clerk, by the advice of the friends of the contestee, drew the tax receipts; and (3) that one of the judges of election was seen to place the ballot of a voter in his pocket instead of the ballot-box.

This demand for the rejection of the entire return is made twice in the notice of contest, and no other relief in connection with this precinct is then suggested. The vote stood for Cabell 242, and for Stovall 238. The rejection of the return would, therefore, yield to the contestant a gain of four votes.

The use of two ballot-boxes affords no valid ground for the rejection of this return.

But the contestant asserted, in argument, that 28 votes were illegally rejected on the pretext that the taxes of the electors had not been paid by themselves, and he claimed 28 additional votes on that account. If this claim, being established, could possibly change the result, while we might not be able, without difficulty, to reach a unanimous conclusion that no votes were illegally rejected on the ground alleged, we should be compelled to report that so many as 28 votes were not so rejected. But in view of the fact that the concession of all these votes to the contestant would still leave the contestee a majority of 831, and of the obligation which, if this change be made, will constrain us, for still stronger reasons, to exclude the vote of Shockoe precinct, where the contestant had a majority of 65, and thereby raise the contestee's aggregate majority to 896, we have concluded not to disturb the returns of either of these precincts.

The charge that one of the judges placed the ballot of a voter in his pocket is completely disproved. And if it were, that fact would not authorize the exclusion of the entire vote of the precinct.

The contestant, in his brief, presents a demand, connected with the claim of 28 votes just considered, to which no reference is made in his notice of contest. It is a demand that 175 additional votes, including the 28, be allowed him in the entire county because refused on the ground that the electors had not paid their own taxes. He says—

(1) That he has proven that "28 votes at this precinct were unlawfully rejected because of the manner in which the receipts for the capitation tax were written"; (2) that Sheriff Overby testified that "these receipts were issued to the number of 150 or

200 colored men" for the entire county; and (3) that inasmuch as one of the Ringgold judges of election had said that Judge Aiken, of Danville, had said that these receipts were unlawful, it was to be inferred that 150 or 200 votes offered for the contestant in Pittsylvania County were unlawfully rejected because of the form of the capitation-tax receipts. And thereupon, without proof of the offer and rejection of these 150 or 200 votes, and without any averment to that effect in his notice of contest, he seeks to appropriate the average of 150 and 200—that is to say, 175 votes.

It is obvious that we could find no excuse for complying with a demand resting on such shadowy grounds. There is no legal evidence of the alleged facts. Hearsay and inference cannot be substituted for proof.

BROSVILLE PRECINCT, COUNTY OF PITTSYLVANIA.

The contestant asserts, in the notice of contest, that at the precinct of Brosville, in the county of Pittsylvania, many illegal votes for the contestee were received and many legal votes for the contestant rejected.

He asks for no relief. The testimony completely disproves his averments. There is not the slightest reason to interfere with this poll.

DOUBLY REGISTERED VOTERS IN PITTSYLVANIA COUNTY.

The contestant, in his brief and argument, claims 550 additional votes in the county of Pittsylvania, on the ground that 550 of his supporters, who were registered, each at two or more precincts, were not permitted to vote. This demand is not suggested in the notice of contest, and therefore cannot be considered by us, and if it were necessary would be rejected for that reason, nor is it sustained by the proofs.

The proof on which this claim is based is found in the following testimony of James Wood :

Q. 26. You are shown a copy of the Daily News, a paper published in Danville, Va., and the copy shown you, dated Tuesday, November 2, 1880. It contains what purports to be a letter from Attorney-General Field, of Virginia, in answer to a letter addressed to him by Mr. E. A. Catlin, Democratic supervisor of election, held on that day. In that issue of that paper, and in the article professing to recite Attorney-General Field's letter to E. A. Catlin, as above, occurs the following: "Answer to second question: Any person's vote may be objected to on the day of the election, and if it shall appear that his name is improperly on the registration books his vote should be rejected. If it appears that a person has registered at two places in the same county, without a transfer, his vote should be rejected." Did not the Democratic supervisor and challenger at that election, November 2, 1880, act upon that opinion as if it had read that the same name appeared at two precincts, without reference to the identity of the person?—A. That was my understanding of their ruling.

Q. 29. If the construction put upon Attorney-General Field's letter, above quoted, by the Democratic supervisors and challengers of Danville had been generally acted upon at every precinct in Danville and in Pittsylvania County, how many colored voters, in your opinion, would have been disfranchised in Danville and Pittsylvania County at that election?

(Objected to, as calling for the mere opinion of the witness upon a purely hypothetical case, which is not evidence, and for an opinion which has about as much bearing upon this case as if, instead of Pittsylvania, it had been asked with reference to Babylon.)

A. In my opinion it would have disfranchised a large number, probably five or six hundred.

This witness, it appears "understood" that at one of the 30 precincts of Pittsylvania County every person who offered to vote in a name which was registered at two precincts was denied the right, even when there were two different voters of the same name, and he is of the opinion that if the same thing was done at each of the other 29 precincts then probably 500 or 600 colored men were disfranchised in the entire county.

We should not feel warranted in allowing the contestant any additional votes upon this proof at the particular precinct to which it refers, even if the pleadings permitted him to claim them. But if it be true that the judges at the Court-House precinct in Danville placed upon the attorney-general's letter the erroneous construction which the witness understood them to place upon it, we are not at liberty to assume, without proof, that the judges at the other 29 precincts misinterpreted the letter in the same way. Nor, assuming it to be true that the same erroneous construction was placed upon the letter in all the precincts of the county, can we receive the *opinion* of this witness as proof of the fact that it caused a disfranchisement of 500 or 600 colored voters in the county. It does not appear that expert testimony from this witness is admissible to establish that fact. But if the fact were established, we could not, upon this record, assume or conclude that the 500 or 600 disfranchised colored men were all supporters of the contestant. There is no proof to justify contestant's demands.

The census of 1880, showing the population of Danville to have been 7,526, satisfies us that the establishment of this claim by proof was an impossibility. For if of these 550 disfranchised colored men 328 were, as the contestant asserts, voters of the town of Danville, then the voters of that town numbered about 1,983, and constituted more than 26 per cent. of the entire population. By the ordinary rule, reckoning the population of Danville at even so much as 8,000 on 2d November, 1880, there could hardly have been over 1,600 voters if all were qualified according to law. The proof shows that 1,324 persons voted at Danville on 2d November, 1880; that 311 persons were disqualified by non-payment of tax and conviction of crime, and therefore did not vote, making 1,635, which accounts in a satisfactory way, it seems to us, for the voting population of that town. If, however, we were to adopt the views of contestant, and add to the 1,635 voters found above 328, which he claims were prevented from voting for him, and some ten or twelve more who are shown by the testimony to have desired to vote for contestee, but were prevented by the crowd from doing so, we would find ourselves confronted with the fact that there were in Danville on said 2d November, 1880, about 1,983 voters out of a population of less than 8,000, a majority of whom, according to the census returns, were females. The fact is the vote at Danville on the day named was quite a full vote, the population and other facts considered.

PETERS'S CREEK, NUNN'S STORE, GATES'S STORE, PATRICK COUNTY.

The contestant asserts in his notice that at the precincts of Peters's Creek, Nunn's Store, and Gates's Store, in the county of Patrick, the judges of election opened the ballot-boxes during the progress of the election, and examined and counted the votes contrary to law, and he demands that the returns of these three precincts be rejected by the House of Representatives.

But he has offered no proof in support of this charge, except as to the precinct of Gates's Store. He produced two witnesses to impeach the returns of this precinct. Their testimony completely refutes the charge instead of proving it.

But if that were not so, their depositions are not admissible in evidence, because, like the rest of the contestant's Patrick County depositions, they were taken before the county clerk, who had no lawful authority to take them, and the contestee objected before they were taken.

CHARITY PRECINCT, PATRICK COUNTY.

The contestant, in his notice of contest, asserts that the county canvassers of Patrick County illegally rejected the returns of Charity precinct, and demands that the returned vote of this precinct be counted.

But his own proof shows that the only return made by the judges of election of the precinct was a return of the vote for electors of President and Vice-President, which return wholly omits the votes cast for the Republican electoral candidates. It shows that the judges of election made no return at all of the vote for Representative in Congress. The omission of the county canvassers to canvass votes *not returned* was not illegal. On the contrary, the canvass of votes not returned would have been a lawless proceeding.

If it were true, as the contestant asserts in his brief, that 51 votes were cast for the contestant, and only 20 for the contestee, at this precinct, the contestant might have availed himself of the net result by proper averments in his notice, duly supported by legal proof. But he made no such averments. His only averment was that the county canvassers *illegally rejected* the return; and that averment was not true. Nor is the testimony taken on the subject before the county clerk admissible.

CARROLL COUNTY.

The contestant, in his notice, demands the rejection of the entire vote of Carroll County. But there is no proof to justify any modification of the official returns from this county.

SHOCKOE PRECINCT, PITTSYLVANIA COUNTY.

The contestee, in his answer, demands the rejection of the vote of Shockoe precinct, in Pittsylvania County, where the contestant received as reported a majority of 65 votes. We might well exclude this precinct from the count by reason of the wrongful and illegal conduct practiced by friends of contestant at that point, but for reasons already suggested we have concluded not to disturb the return, as we can, after thorough examination of all the facts and circumstances connected with the election in the fifth Congressional district of Virginia, on 2d November, 1880, sustain the contestee, George C. Cabell, in his position by at least his returned majority of 859 votes, and report the accompanying resolutions:

1. *Resolved*, That John T. Stovall was not elected to a seat in the Forty-seventh Congress from the fifth Congressional district of Virginia, and is not entitled thereto.

2. *Resolved*, That George C. Cabell was duly elected to a seat in the Forty-seventh Congress from the fifth Congressional district of Virginia, and is entitled to represent the same.

S. P. BAYLEY vs. JOHN S. BARBOUR.**EIGHTH CONGRESSIONAL DISTRICT OF VIRGINIA.**

In this case the only ground of contest insisted on was that contestee at the time of the election was ineligible and disqualified to be the Representative of said district and State, because he was not a *bona fide* resident or inhabitant of Virginia. Held, That contestee was in fact at the time and before the election an inhabitant of Virginia, and was duly elected.

APRIL 12, 1882.—Mr. WAIT, from the Committee on Elections, submitted the following

R E P O R T:

The Committee on Elections, to whom was referred the above contested election case, having had the same under consideration, beg leave to submit the following report :

This case comes before the committee upon the application of S. P. Bayley, who contests the right of John S. Barbour to a seat in this House from the eighth Congressional district of Virginia, contending that upon the grounds set out in the notice of contest the said John S. Barbour was not, and the said contestant S. P. Bayley was, duly elected said Representative for said district and State.

The notice of contest contained six separate and distinct grounds and charges.

The second and third grounds were, that large numbers of persons who were not qualified according to law were permitted to vote at the election held for said Representative on November 2, 1880, and that such illegal votes were received, counted, and returned for the said John S. Barbour for Representative.

The fourth allegation was that large numbers of lawful voters were prohibited from voting, which said votes, had they been received, would have been cast for the contestant.

The fifth and sixth allegations charged that large numbers of lawful voters, by intimidation and gross frauds and abuses, were prevented from casting their votes for the said contestant.

In disposing of these grounds of contest it is only necessary to state that there was no evidence whatever offered in support of them, and that there was no contention before the committee that they were in point of fact true. Having been abandoned, it appears from the record that of the 27,441 legal votes cast at said election the said Bayley, contestant, received only 9,177. This leaves for the committee's consideration the sole question raised by the first ground set out in the notice of contestant, to wit:

That the said John S. Barbour, at the time of said election for such Representative, was ineligible and disqualified to be the Representative of said district and State.

The said ineligibility and disqualification consists in this, that the said John S. Barbour was not at the time aforesaid either a *bona fide* resident or inhabitant of said State of Virginia.

When the contestant abandoned the grounds of contest above set forth he at the same time relinquished all right or claim to the seat of the sitting member, even in the event that the same should be declared vacant on the ground of the constitutional ineligibility and disqualification of its occupant.

In the case as made up and presented to the committee the contestant has only that interest in it that is possessed by every other elector in the district; yet there is no petition or memorial from any body of the electors of the district addressed to Congress setting forth any objection to the right of Mr. Barbour to a seat in the House to which he has been elected on the alleged ground that he is not possessed of those qualifications which, by the Constitution of the United States, are indispensable to the holding of a seat in Congress.

Both upon principle and precedent the committee think that those questions which relate solely to the qualifications of members of Congress should be more appropriately brought to the attention of Congress by a memorial of the electors who are alone interested in the result. This practice could work no wrong, and would be productive of much good in preventing troublesome and gratuitous contests which might be inspired by motives other than the interests of the electors.

The subject being one of great importance, however, they have considered it on the testimony adduced, which is solely upon the question of the qualification of Barbour under the Constitution of the United States.

In support of the voluntary contest thus made by S. P. Bayley against the eligibility of the sitting member, he proceeded to take the testimony of three witnesses in the city of Alexandria, namely, George Duffey, Augustus F. Idensen, and Jno. S. Barbour, the last-named being the returned member himself, the object being to show that the said Barbour was not a *bona fide* inhabitant of the State of Virginia, as required by the Constitution of the United States. Mr. Duffey was the commissioner of revenue for the city of Alexandria, and Mr. Idensen was clerk to the State assessor of that city for the year 1880. The contestee, Barbour, on his own behalf, took no testimony, but submitted the case upon the evidence of the contestant.

Duffey testifies that it was his duty to assess all real and personal properties, incomes, licenses, &c., also the annual capitation tax prescribed by law upon all male inhabitants of the State abiding in the city of Alexandria over twenty-one years of age at the time of the assessment.

That the said Barbour had no real property in the city of Alexandria, but that the property of his wife situated there was assessed to her on the property books as an Alexandrian, the law requiring the residence of the owner to be given. Idensen testifies that this was changed in 1880, when Mrs. Barbour, after the election, was put down as a resident of Washington, D. C., when he, as the assessor's clerk, knew that Jno. S. Barbour was an actual resident in the city, and so stated in his deposition. Mr. Barbour testifies that he was a native of the State of Virginia; had always been a citizen of said State; never claimed to have lived elsewhere in a permanent sense, or to have exercised citizenship in any other State or Territory; that his post-office, business headquarters, residence required by statute for the service of legal process upon him, were all in the city of Alexandria, and within the limits of said State, and that while he had a temporary winter residence in the city of Washington, he had taken a house in Alexandria, with his family, in Septem-

ber, 1880, and was so actually residing at the date of the Congressional election in November, 1880, and subsequently.

The code of Virginia, ch. 166, sec. 7, which provides for the manner of serving process against corporations, says:

It shall be sufficient to serve any process against or notice to a corporation on its mayor, rector, president, or other chief officer, or in his absence from the county or corporation in which he resides, &c., " " " and service on any person under this section shall be in the county or corporation in which he resides; and the return shall show this, and state on whom and when the service was, otherwise the service shall not be valid.

Under this statute service of process was habitually made upon John S. Barbour, as president of the Virginia Midland Railway, as a resident of Alexandria.

That in July previous to his nomination for Congress he had declined to be listed by the enumerator of Washington City as an inhabitant of that city, but then stated that he was an inhabitant of Virginia.

That when traveling absent from the State of Virginia he invariably registered himself as from Virginia.

That at the time of the election and before he was actually residing in Alexandria, without any intention of removing therefrom permanently. It was contended on behalf of the contestant that although John S. Barbour was an actual resident of the city of Alexandria, Va., within said district, at and before the time of the election, he was not an inhabitant within the meaning of the constitutional requirements to qualify him as a member of Congress.

In support of this view the case of John Bailey (Clark and Hall's Contested Election Cases, p. 411) was relied upon. Bailey was chosen a member of Congress from the State of Massachusetts on the 8th day of September, 1823, at which time he was actually residing in the city of Washington, in the capacity of clerk in the State Department. On the 1st day of October, 1817, Bailey, who was at that time a resident of Massachusetts, was appointed by the Secretary of State a clerk in the Department of State, and immediately repaired to Washington, and entered on the duties of his appointment. He continued to reside in the city from that time with his family—having in the mean time married—in the capacity of a clerk in the Department of State, until the 21st day of October, 1823, subsequent to the date of his election, at which time he resigned his appointment. Upon the petition of certain citizens and electors of the Norfolk district, in the State of Massachusetts, the question of his eligibility and qualification under the Constitution was brought to the attention of Congress, and it was contended on behalf of Bailey that, although he had been from the time of his appointment in 1817 up to and subsequent to his election to Congress a resident of Washington, he had retained his citizenship in the State of Massachusetts, and by virtue of this citizenship it was contended that within the constitutional requirement he was qualified as a member of Congress from that State. The committee considered at some length the distinction between citizenship and inhabitancy, and their report, which was approved by Congress, against the eligibility of Bailey as a Congressman was based upon these distinctions. It was held that being a citizen of the State, granting that Bailey was such, but residing permanently elsewhere did not satisfy the constitutional requirements necessary to make him eligible as a member of Congress. The committee say that "the word 'inhabitant' comprehends a simple fact—locality of existence; that 'citizen' comprehends a combination of civil privileges, some of which may be enjoyed in any of the States of the Union."

The case of Barbour differs materially from that of Bailey in this, that not only had Barbour continued to be a citizen of the State of Virginia, but that he had always held his legal residence in said State as hereinabove recited. Added to that was the fact that previous to his election as a member of Congress from the eighth Congressional district of Virginia he had removed to said State and had become an actual inhabitant thereof, residing there without any intention of permanently removing, whereas Bailey was, when elected, an actual inhabitant and resident of the District of Columbia, not claiming a residence or inhabitancy actually in the State of Massachusetts, except constructively through and by virtue of his citizenship, which he contended he had never renounced in said State.

It was contended further by the contestant in this case that the elective franchise in Virginia was one of the essentials of inhabitancy, and that under the local laws of the State of Virginia a residence of twelve months within the State, and a residence of three months next preceding the election in the county, city, or town where the person offers to vote, was a requisite qualification of an elector, and that with these requisite qualifications a registration was also necessary; that John S. Barbour had never registered as a voter, and therefore he was not an inhabitant within the contemplation of the Constitution.

It was contended that the word "inhabitant" embraces citizenship; that an inhabitant must be entitled to all the privileges and advantages conferred by the laws of Virginia, and that the elective franchise alone confers these; therefore an inhabitant must have a right to vote, and further, that the burdens of inhabitancy were predicated upon the right to vote.

In answer to this position, without deeming it necessary upon the facts of this case to enter into the constitutional signification of inhabitancy, it is only necessary to say that the right to vote is not an essential of inhabitancy within the meaning of the Constitution, which is apparent from an inspection of the Constitution itself. In Article I, section 2, the electors for members of Congress "shall have the qualifications requisite for electors of the most numerous branch of the State legislature," but in the succeeding section, providing for the qualifications of members of Congress, it is provided that he shall be an inhabitant of the State in which he shall be chosen. It is reasonable to conclude that, if the elective franchise was an essential, the word "elector" would have been used in both sections, and that it is not used is conclusive that it was not so intended.

In the case of Philip Barton Key (Clark and Hall's Contested Election Cases, p. 224), who was elected a member of Congress from Maryland on the 6th day of October, 1806, and who was seated as such, the facts are these: Mr. Key was an inhabitant of the District of Columbia, and in November, 1805, he purchased about one thousand acres of land in Montgomery County, Maryland, about fourteen miles from Georgetown; that some time in the summer of 1806 he caused a dwelling-house to be erected on said lands, into which he removed with his family on the 18th September, 1806; that he was residing in said house, which was only partially completed, from that time up to the 20th of October, 1806, when he removed back with his family to his seat in the District of Columbia, where he remained till about the 28th of July, 1807, when they again removed to his estate in Montgomery County, where they remained till the 20th of October, 1807, when they again returned to his seat in the District of Columbia. He was only living and inhabiting within his said district in Maryland for the period of little upwards

of a month, during which time, to wit, on the 6th day of October, 1806, the election took place, at which he was returned as a Representative to Congress from said district. Notwithstanding this short residence, and the fact that Mr. Key, before his removal to Maryland, had been confessedly a citizen and inhabitant of the District of Columbia, it was decided by Congress that he was eligible and qualified under the Constitution as a member of Congress.

In further answer to the position that the elective franchise is necessary to qualify one as a member of Congress, it will appear from an inspection of the constitution of Maryland of 1776, and in full force in 1806, when Mr. Key was elected a member of Congress from Maryland, that the qualifications for electors for the most numerous branch of the legislature—

Shall be freemen above twenty-one years of age, with a freehold of fifty acres of land in the county in which they offer to vote, and residing therein, and all freemen having property in this State above the value of thirty pounds current money, and having resided in the county in which they offer to vote one whole year next preceding the election.

Therefore, Mr. Key, who was deemed qualified as a member of Congress, was not an elector of the State of Maryland, and could not vote at the election at which he was returned as a member.

Without resting this case, however, upon these grounds, the committee are satisfied from the facts of the case, as developed in the testimony, that John S. Barbour was, in point of fact, before and at the time of his election as a member of Congress from the eighth Congressional district of Virginia, an actual inhabitant of the State, enjoying all the rights and subject to all the burdens as such, and that having been duly elected as a member of Congress from said district he is entitled to his seat.

Resolved, That John S. Barbour was duly elected and is entitled to his seat as a member of the Forty-seventh Congress from the eighth Congressional district of the State of Virginia.

JOHN T. WAIT.
JAMES M. RITCHIE.
SAMUEL H. MILLER.
LOWNDES H. DAVIS.
SAMUEL W. MOULTON.
W. H. CALKINS.
A. A. RANNEY.
WM. G. THOMPSON.
F. JACOBS, JR.
GEO. C. HAZELTON.
G. W. JONES.

JONES vs. SHELLEY.**FOURTH CONGRESSIONAL DISTRICT OF ALABAMA.**

This case grows out of a special election held November 7, 1882, to fill a vacancy from the fourth district of Alabama caused by the unseating of Charles M. Shelley (Smith vs. Shelley, *supra*, page —). The time for taking of testimony under the statute would extend beyond March 4, when Congress would expire by limitation, and contestant asks that some other mode of procedure be prescribed.

Held, That unless the House does what is asked the contest will prove futile; that the House has authority to do so, and recommend that a committee from the Committee on Elections proceed to said district and there take the evidence which may be adduced by either party, and report the same to the House.

IN MATTER OF MEMORIAL OF JOHN W. JONES IN ELECTION CASE OF JONES vs. SHELLEY.

JANUARY 23, 1883.—Mr. RANNEY, from the Committee on Elections, submitted the following

R E P O R T:

The committee have heard the parties more directly interested, examined the memorial, and inquired into the facts, so far as is deemed necessary for present purposes. The House is asked by the petitioner, in a pending contest for the seat as Representative from the fourth Congressional district of Alabama, to fill a vacancy, to prescribe another and more summary mode of procedure than that provided for by the acts of Congress relating to contested elections. The reason is that the time allowed the parties under such acts is such that the present term of Congress will have expired long before the contest can in regular course be concluded. It is perfectly apparent that unless the House does what is asked the contest will prove futile. That the House has authority to do what is requested does not admit of a doubt. The only question is whether there is time now before the end of the session to accomplish the desired purpose, or whether any other mode of procedure which is reasonable and practicable can avail anything. The memorial sets forth with great clearness and completeness a state of facts which calls loudly for such action, if it is likely to be of any use commensurate with the attendant labor and expense thereof.

The sitting member, after having been once unseated at the present Congress, has been again returned with a new certificate in hand to fill the vacancy. He was unseated because the certificate before was the result of frauds at the polls, and the fruits of illegal and evil practices on the part of his partisan friends. His present certificate is alleged to have been induced and procured by the same methods in repetition, with perhaps some variations and aggravations.

If this is so, it would seem that there is, as charged, a settled determination on the part of the evil-disposed persons therein that no candidate of the dominant party in the district in question shall be counted in and get the certificate in any event.

A brief statement of some of the main facts alleged will suffice:

A contest was regularly instituted under the said acts of Congress, and the sitting member has served an answer to the same, so that the

contest is now pending. The ninety days allowed for the taking of the evidence will extend beyond the 4th day of March next.

The sitting member was declared elected on the strength of a vote returned of only 6,752, whereas the claim is that he did not in truth and in fact get over about 5,000 votes. Contestant was declared and returned to the State board of canvassers as having received only 4,811, whereas he in truth and in fact received over 15,000 votes, which were legally cast, counted, and returned to the boards of county canvassers, but 10,000 of which were there counted out either for no assignable reason or because of certain pretended informalities in the returns and upon frivolous objections which were resorted to only as pretexts in an earnest search for some real or plausible excuse. There are other charges of fraud of a more heinous character, which deprived contestant of many votes in the original returns; but laying those aside and taking the returns as made from the voting precincts to the county boards the contestant is said to have been elected by about 6,000 majority; the reports of the United States supervisors give him about that majority, as would appear by certified copies furnished the committee. It will appear that the vote of the sitting member (6,752) is less than one-third of the votes cast for both candidates according to the precinct returns. It is less than one-third of the votes cast in prior elections in the same district for members of Congress, as appears by the history of those elections as read from the records of this House. It is less than one-fourth of the voting population of the district, as appears by the last census, and as shown in the last prior contest alluded to.

The well-known facts of history, as found and proved in prior contests from this district, to which the sitting member was a party, tend to give an air of probability to the main and essential facts alleged in the memorial. Besides this, if the committee needed any further information, all advices which they get from reputable and honorable men of the district, and who appear to be cognizant of the facts, are to the same effect. It is confidently asserted and believed by many who feel an interest in having fair elections and honest counts that they can be secured in the immediate future only through vigorous action on the part of Congress of a legislative character.

If what is alleged is true it would seem that what has occurred in the district is subversive of the fundamental principles of a republican form of government, and that anything like fairness and honesty in the conduct of elections, and especially in the subsequent canvassing of the returns, seems to be out of the question; that unfairness and dishonesty is the rule and not the exception on the part of the partisan friends of the sitting member; that the same is practiced deliberately, persistently, openly, and in apparent bold defiance of the law of Alabama and as held in Congress. The record which this House contains of the facts which have been proved in the prior election cases from the same district, showing how a party with a clear majority of four to one have uniformly been deprived of their rights and the certificate wrongfully given to a minority candidate, is a sad and sickening one for those who believe in fair dealing, and credit the facts as alleged. But laying those considerations aside as only important now so far as they enforce other considerations which must determine the propriety and wisdom of the action which the memorialist invokes, it is sufficient to say that the facts alleged in the memorial, confirmed and rendered highly probable as they are by other well-known facts and from other sources outside, entitle the contestant to the means of taking other proofs and to the remedy which he seeks. If the sitting member has a certificate

which was wrongfully awarded him by the means and methods set forth in the memorial, and upon the state of facts alluded to, he should not be permitted to hold the seat for a day or a minute longer than is absolutely necessary under the usages of this House. It is due to the honest electors of the district and to the whole country, as well as the cause of good government, that an opportunity should be afforded to prove or disprove the facts alleged.

The committee therefore report and recommend the passage of the following preamble and resolution, being assured that all the needed evidence upon the main issue of fact will be mainly documentary and can be taken in course of about ten days:

Whereas John W. Jones claims to have been elected as Representative from the fourth Congressional district of Alabama, to fill a vacancy, and has instituted proceedings for a contest under the provisions of the acts of Congress relating to contested elections; and whereas there is not sufficient time to prosecute and conclude said contest under the provisions of said acts and in course before the expiration of the present term of Congress, and the contest must be abandoned unless some other more speedy mode of procedure be prescribed: Therefore,

Resolved, That a special committee, composed of three members of the Committee on Elections, be appointed, with authority, and whose duty it shall be to proceed, without unnecessary delay, to the fourth Congressional district of Alabama, and there take the evidence which may be adduced by either party in the matter of the pending contest, and report the same to the House as soon as may be. That the committee appointed is empowered to send for persons and papers and administer oaths, and also to employ stenographers, messengers, and a sufficient clerical force, at the usual compensation, the expenses to be paid out of the contingent funds of the House, upon the approval of the chairman of said committee.

IN RE CONTESTED-ELECTION CASE OF JOHN W. JONES, CONTESTANT, AGAINST CHARLES M. SHELLEY, CONTESTEE.

Held, That the rule of law being that the ordinary methods of trying contested-election cases in accordance with the provisions of the act of Congress will not be departed from without good cause, no such cause has been shown.

Mr. BELTZHOOVER, of the Committee on Elections, to whom was referred a certain memorial of the above-stated contestant, submits the following

VIEWS OF THE MINORITY:

The records of the Committee on Elections, and the answer of the contestee made at the summary hearing of the memorial before the committee, show that at the election held on November 7, 1882, to fill the vacancy in the fourth Congressional district of Alabama, the contestee was duly elected and received the certificate; that upon the reassembling of Congress in December he was sworn in, and is now the sitting member from the district. All the presumptions of law are in favor of the legality and regularity of the election and the validity of the certificate which is the evidence of the contestee's title. The contestant served

a notice of contest regularly on the contestee, who filed an answer, and both parties are now engaged in the prosecution of the contest and in taking testimony. The usual and well-established method of determining the legality of said election is by pressing this contest under the law to a decision before the committee and the House. It is true that it has been held that the acts of Congress regulating contests are only directory and not imperative, and may therefore be disregarded by the House if it sees proper to do so; but all the best interests of fair trial and just judicial determination are largely subserved by adhering to the regular prescribed methods. McCrary says: "They [the statutes regulating the mode of contesting elections] constitute wholesome rules not to be departed from *without cause*" (sec. 349). This was settled by the House in the case of Williamson *vs.* Sickels (1 Bartlett, 288). The contestant, through his memorial, asks Congress to take a short cut outside of the law for the disposition of the case by the appointment of a special committee with summary powers and authority to act according to its own discretion. There are strong reasons why this extraordinary relief should be refused and the regular practice be adhered to.

First. The contestant complains that the time is insufficient to finish his contest in the way prescribed by the statute. But there is no evidence that this is so, and even if it were he has been guilty of laches in conducting his case. He might have begun about thirty days sooner than he did, and thereby saved a large portion of the brief time which of necessity remained to him to test his rights, and which he now complains is too short.

Second. After the memorial had been filed the contestee appeared at the room of the Committee on Elections early in the present session, in compliance with a notice, for the purpose of answering said memorial, but the contestant did not appear. The contestant then requested that if at any time the memorial was to be considered by the committee a notice should be sent to him. He never received any such notice until he was directed to appear before the committee after the report of the sub-committee was in print. In addition to this the contestant told the contestee that he did not intend to proceed on the memorial, but that he would follow up the contest, and in conformity to this understanding both parties are now prosecuting the contest under the law.

Third. It is utterly impossible for any committee to go to Alabama and in the time remaining before the end of the present session of Congress take the testimony which of necessity will have to be taken if it is begun *de novo* to show all the facts in the case. The district embraces five counties and is 90 miles long and 80 miles wide. In one of the counties there is no railroad communication within 16 miles of the county seat. It would be wholly impracticable to make anything like a reasonable effort at getting testimony in less than five days for each county, and this would necessarily be exclusive of the time required for serving notices, subpoenaing witness, traveling, &c.

Fourth. A special committee will cost several thousand dollars, without any reason whatever to believe that it would result in obtaining anything but a mere fraction of the evidence, which being taken first and by the contestant, would probably tend to support the allegations in his memorial, and be the basis for an unjust partisan judgment in his favor. The report of the majority of the committee seems to point to this when it suggests that the returns would be sufficient to justify the seating of the contestant. This proposition is based on the assumption that the returns referred to are legal and regular. On the contrary, they are stated to be irregular and utterly false and fraudulent. Among other charges made against them by the contestee are these:

1. Most of these returns, which the contestant wants to drag in as conclusive evidence of his rights in this unusual way, passed through the Republican headquarters on their way to the several court-houses of the district, and were manipulated, changed, altered, and fixed up to suit the interests of the contestant's party managers. It is submitted that under these circumstances these returns would not be such evidence as should be admitted without an ample opportunity to explain and contradict them by parol testimony.

2. George H. Craig, who is the counsel for the present contestant, was a candidate for election to the Forty-eighth Congress on the same ticket and at the same election at which the contestant ran. Craig and Jones were both candidates at the same time, conducted their campaign together, were both beaten, are both contestants, and are now pooling the issues of their contests. They controlled and secured the naming of all the Democratic supervisors of election, although the Democratic committee had submitted a list of persons who were thoroughly qualified and were trusted representatives of the party whose interests they were intended to guard. The Democrats who were named as supervisors by the friends of the Republican candidates, besides being in many instances not well fitted in many ways, were not of that class whose party fealty made them fair representatives of their party.

3. The memorial upon which the committee base their report is the work of Mr. Craig, who contests the seat of Mr. Shelley in the next Congress, and the effect of an imperfect and hasty and unfair investigation now would be to greatly prejudice the case of the latter and help the case of the former. This Congress has had contested-election cases enough of its own without embarking in the business of setting up small side shows to help along contests in the next House.

4. The United States marshal gave Messrs. Craig and Jones an indefinite quantity of blank commissions for deputy marshals, to be filled up for whoever they saw fit and wherever they would do the most good for the Republican candidates in this grand duplex combination.

Fifth. The report of the majority of the Committee on Elections recommending that a special committee be created with indefinite and arbitrary powers is as positive and dogmatic in its findings as if they were sustained by facts. The report rests solely on the mere *ex parte* statement, not under oath, of the memorialist, whom the contestee contradicts in every material allegation. What evidence is there in this memorial which any court would regard of the slightest weight? No chancellor would grant any relief on it without some verification of its allegations. No Committee of Elections or House of Representatives on such statements alone have ever characterized the citizens and sworn officers of any Congressional district as "evil-disposed persons," &c. No committee has ever based a finding on the fact that the returned candidate had received less than one-third of the votes cast at the previous elections or less than the voting population of the district. This kind of evidence, which is always incompetent, is still more unreliable when it is remembered that in this instance the election was to fill a vacancy of only a few months, and there was no general interest taken in the result, and no reason for a full vote being cast. But in order to support their report the majority resort to "all advices which they get from reputable and honorable men of the district and who appear to be cognizant of the facts." What are these "advices"? Who are they from? Is Congress to solemnly adjudicate upon the right of a member to a seat on the hearsay and rumor which members gather in their pri-

vate communications with persons unknown and unsworn, and of whom and of which there is no public or verified knowledge?

The majority of the Committee on Elections further bolster their remarkable report by saying "that the facts alleged in the memorial, confirmed and rendered *highly probable* as they are by other well-known facts and from *other sources outside*, entitle the contestant to the relief which he asks," &c.

This committee in the case of *Mackey vs. Dibble* refused to investigate by a commission charges of fraudulent interference with and forgery of the pretended evidence offered to make out the case for the contestant, yet in that case these charges were made upon and fortified by the sworn affidavits of several witnesses. We are met also with the stale argument that all the colored voters must be presumed to be Republicans, and in addition must be presumed to have voted for every Republican candidate. To test it let it be supposed that the memorialist was an escaped convict from the North Carolina penitentiary, where he had been sentenced for a high crime. Suppose he was a fugitive from justice who had eluded the prison keepers and was seeking an asylum as a Republican Representative in Congress. Suppose that his history and character was such that if he were here at the bar of the House he could not be sworn in under the information within the personal knowledge of the members of the present House. If these things were true, would it not be a violent and unwarranted assumption of fact that all the colored people of the district in which this contention arises would vote for him? How does the House, before making the inquiry, know what fact may exist affecting the popularity of the candidate? Has he integrity and intelligence? Do the colored people all vote the Republican ticket, and do they support the candidate of the party without respect to character, fitness, intelligence, or integrity? Do these qualities affect the popularity of a candidate among them? If so, reputable colored people of the district have some rights which even a Republican committee in its direst exigency should respect. The continuous cry of fraud against elections in the South, on the assumption that all the colored people vote the Republican ticket, is itself becoming a fraud. On this theory the election committee, consisting of eleven Republicans and four Democrats—a majority of two-thirds and one to spare—vindicated the fundamental principles of republican government at the last session by unseating General Shelley, who had been elected by over 3,000 majority. They vindicated the same great and essential principles by ousting Mr. Finley, Mr. Dibble, Mr. Wheeler, Mr. Tillman, and others, but their appeal to the country resulted in ousting the ousters, and returned to their places again most of the victims of this unholy crusade with an overwhelming Democratic majority at their back.

Sixth. The rule of law being that the ordinary method of trying contested elections in accordance with the provisions of the act of Congress will not be departed from without good cause, it is respectfully submitted that under all the circumstances in this case no such cause has been shown.

F. E. BELTZHOOVER.
GIBSON AHERTON.
L. H. DAVIS.
S. W. MOULTON.

L I S T O F C A S E S .
F O R T Y - S E V E N T H C O N G R E S S .

| | Page. |
|--|------------|
| ANDERSON vs. REED, first Congressional district of Maine..... | 284 |
| BAYLEY vs. BARBOUR, eighth Congressional district of Virginia..... | 676 |
| BISBEE vs. FINLEY, second Congressional district of Florida | 172 |
| BUCHANAN vs. MANNING, second Congressional district of Mississippi..... | 287 |
| CANNON vs. CAMPBELL, Territory of Utah..... | 604 |
| COOK vs. CUTTS, sixth Congressional district of Iowa | 243 |
| JONES vs. SHELLEY, fourth Congressional district of Alabama..... | 681 |
| LEE vs. RICHARDSON, first Congressional district of South Carolina | 520 |
| LOWE vs. WHEELER, eighth Congressional district of Alabama..... | 61 |
| LYNCH vs. CHALMERS, sixth Congressional district of Mississippi..... | 338 |
| MABSON vs. OATES, third Congressional district of Alabama..... | 8 |
| MACKEY vs. O'CONNOR, second Congressional district of South Carolina..... | 561 |
| SESSINGHAUS vs. FROST, third Congressional district of Missouri | 380 |
| SMALLS vs. TILLMAN, fifth Congressional district of South Carolina..... | 430 |
| SMITH vs. ROBERTSON, sixth Congressional district of Louisiana..... | 284 |
| SMITH vs. SHELLEY, fourth Congressional district of Alabama | 18 |
| STOLBRAND vs. AIKEN, third Congressional district of South Carolina..... | 603 |
| STOVALL vs. CABELL, fifth Congressional district of Virginia | 667 |
| STROBACH vs. HERBERT, second Congressional district of Alabama..... | 5 |
| WITHERSPOON vs. DAVIDSON, first Congressional district of Florida..... | 163 |
| (687) | |



INDEX.

A.

| | Page. |
|--|------------|
| Aiken, D. Wyatt, contestee, third district of South Carolina..... | 603 |
| Alabama—JONES vs. SHELLEY | 681 |
| MABSON vs. OATES | 8 |
| SMITH vs. SHELLEY | 18 |
| STROBACH vs. HERBERT | 5 |
| ANDERSON, SAMUEL J., vs. THOMAS B. REED, contested election, first district of Maine | 284 |
| ANDERSON vs. REED, report of committee..... resolution adopted..... | 284 286 |
| Atherton, Hon. Gibson, Ohio, member of Committee on Elections | 3 |

B.

| | |
|--|-------------------|
| Barbour, John S., contestee, eighth district of Virginia..... | 676 |
| BAYLEY, S. P., vs. JOHN S. BARBOUR, contested election, eighth district of Virginia | 676 |
| BAYLEY vs. BARBOUR, report of committee | 676 |
| resolution adopted | 680 |
| Beltzhoover, Hon. F. E., Pennsylvania, member of Committee on Elections.... | 3 |
| BISBEE, HORATIO, Jr., vs. JESSE J. FINLEY, contested election, second district of Florida..... | 172 |
| BISBEE vs. FINLEY, majority report | 172 |
| minority report | 202 |
| resolutions adopted | 194 |
| BUCHANAN, GEORGE M., vs. VAN H. MANNING, contested election, second district of Mississippi..... | 287 |
| BUCHANAN vs. MANNING, majority report..... minority report..... resolutions adopted | 287 298 297 |

C.

| | |
|--|-------------------|
| Cabell, George C., contestee, fifth district of Virginia..... | 667 |
| Calkins, Hon. W. H., chairman of Committee on Elections..... | 3 |
| Campbell, Allen G., contestee, Territory of Utah..... | 604 |
| CANNON, GEORGE Q., vs. ALLEN G. CAMPBELL, contested election, Territory of Utah..... | 604 |
| CANNON vs. CAMPBELL, majority report..... minority report..... views of Mr. Thompson | 605 655 614 |
| Mr. Pettibone..... | 618 |
| Mr. Miller | 624 |
| Mr. Jacobs..... | 628 |
| Mr. Beltzhoover..... | 629 |
| Mr. Ranney | 641 |
| Mr. Atherton..... | 648 |
| Chairman of Committee on Elections, Hon. W. H. Calkins..... | 3 |
| Chalmers, James R., contestee, sixth district of Mississippi..... | 338 |
| Clerk of Committee on Elections, J. H. Ellsworth..... | 3 |
| Committee on Elections..... | 3 |
| COOK, JOHN C., vs. M. E. CUTTS, contested election, sixth district of Iowa.... | 243 |
| COOK vs. CUTTS, majority report..... minority report..... resolutions adopted | 244 252 252 |
| Cutts, M. E., contestee, sixth district of Iowa..... | 243 |

INDEX.

D.

| | Page |
|---|------|
| Davidson, R. M. H., contestee, first district of Florida..... | 163 |
| Davis, Hon. L. H. Missouri, member of Committee on Elections..... | 3 |
| Dibble, Samuel, claimant, second district of South Carolina..... | 561 |

E.

| | |
|---|---|
| Elections, Committee on..... | 3 |
| Ellsworth, J. H., Indiana, clerk of Committee on Elections..... | 3 |

F.

| | |
|--|-----|
| Finley, Jesse J., contestee, second district of Florida..... | 172 |
| Florida—BISBEE <i>vs.</i> FINLEY..... | 172 |
| WITHERSPOON <i>vs.</i> DAVIDSON..... | 163 |

H.

| | |
|---|---|
| Hazelton, Hon. George C., Wisconsin, member of Committee on Elections. | 3 |
| Herbert, Hilary A., contestee, second district of Alabama..... | 5 |

I.

| | |
|---------------------------------|-----|
| Iowa—COOK <i>vs.</i> CUTTS..... | 243 |
|---------------------------------|-----|

J.

| | |
|---|-----|
| Jacobs, Hon. Ferris, jr., New York, member of Committee on Elections..... | 3 |
| Jones, Hon. G. W., Texas, member of Committee on Elections..... | 3 |
| JONES, J. W., <i>vs.</i> C. M. SHELLEY, contested election, fourth district of Alabama..... | 681 |
| JONES <i>vs.</i> SHELLEY, majority report..... | 681 |
| minority report..... | 683 |

L.

| | |
|--|-----|
| LEE, SAMUEL, <i>vs.</i> JOHN S. RICHARDSON, contested election, first district of South Carolina | 520 |
| LEE <i>vs.</i> RICHARDSON, majority report..... | 520 |
| minority report | 521 |
| note by compiler | 520 |
| Louisiana—SMITH <i>vs.</i> ROBERTSON | 254 |
| LOWE, W. M., <i>vs.</i> JOSEPH WHEELER, contested election, eighth district of Alabama | 61 |
| LOWE <i>vs.</i> WHEELER, majority report..... | 62 |
| minority report | 63 |
| resolutions adopted | 71 |
| LYNCH, JOHN R., <i>vs.</i> JAMES R. CHALMERS, contested election, sixth district of Mississippi..... | 338 |
| LYNCH <i>vs.</i> CHALMERS, majority report | 338 |
| minority report | 361 |
| resolutions adopted | 360 |

M.

| | |
|--|-----|
| MABSON, A. A., <i>vs.</i> W. C. OATES, contested election, third district of Alabama..... | 8 |
| MABSON <i>vs.</i> OATES, report of committee..... | 8 |
| Maine—ANDERSON <i>vs.</i> REED | 284 |
| Manning, Van H., contestee, second district of Mississippi..... | 287 |
| MACKEY, E. W. M., <i>vs.</i> M. P. O'CONNOR, contested election, second district of South Carolina | 561 |
| MACKEY <i>vs.</i> O'CONNOR, majority report..... | 562 |
| minority report | 578 |
| resolutions adopted | 578 |

INDEX.

691

| | Page. |
|---|-------|
| Miller, Hon. S. H., Pennsylvania, member of Committee on Elections..... | 3 |
| Mississippi—BUCHANAN <i>vs.</i> MANNING..... | 287 |
| LYNCH <i>vs.</i> CHALMERS..... | 338 |
| Missouri—SESSINGHAUS <i>vs.</i> FROST..... | 380 |
| Moulton, Hon. S. W., Illinois, member of Committee on Elections..... | 3 |

O.

| | |
|---|-----|
| Oates, W. C., contestee, third district of Alabama..... | 9 |
| O'Connor, Michael P., contestee, second district of South Carolina..... | 561 |

P.

| | |
|---|---|
| Paul, Hon. John, Virginia, member of Committee on Elections..... | 3 |
| Pettibone, Hon. A. H., Tennessee, member of Committee on Elections..... | 3 |

| | |
|--|-----|
| Ranney, Hon. A. A., Massachusetts, member of Committee on Elections..... | 3 |
| Reed, Thomas B., contestee, first district of Maine..... | 284 |
| Richardson, John S., contestee, first district of South Carolina..... | 520 |
| Ritchie, Hon. J. M., Ohio, member of Committee on Elections..... | 3 |
| Robertson, E. W., contestee, sixth district of Louisiana..... | 284 |

S.

| | |
|---|-----|
| SESSINGHAUS, GUSTAVUS, <i>vs.</i> R. GRAHAM FROST, contested election, third district of Missouri | 380 |
| SESSINGHAUS <i>vs.</i> FROST, majority report..... | 381 |
| minority report..... | 399 |
| resolutions adopted..... | 396 |
| Shelley, Charles M., contestee, SMITH <i>vs.</i> SHELLEY, fourth district of Alabama. | |
| contestee, JONES <i>vs.</i> SHELLEY, fourth district of Alabama. | 18 |
| SMALLS, ROBERT, <i>vs.</i> GEORGE D. TILLMAN, contested election, fifth district of South Carolina..... | 681 |
| SMALLS <i>vs.</i> TILLMAN, majority report..... | 430 |
| minority report..... | 431 |
| resolutions adopted..... | 483 |
| SMITH, ALEXANDER, <i>vs.</i> E. W. ROBERTSON, contested election, sixth district of Louisiana..... | 483 |
| SMITH <i>vs.</i> ROBERTSON, report of committee..... | 284 |
| SMITH, JAMES Q., <i>vs.</i> CHARLES M. SHELLEY, contested election, fourth district of Alabama..... | 284 |
| SMITH <i>vs.</i> SHELLEY, majority report..... | 18 |
| minority report..... | 18 |
| resolutions adopted..... | 45 |
| South Carolina—LEE <i>vs.</i> RICHARDSON | 32 |
| MACKEY <i>vs.</i> O'CONNOR | 520 |
| SMALLS <i>vs.</i> TILLMAN | 561 |
| STOLBRAND <i>vs.</i> AIKEN | 430 |
| STOLBRAND, CARLOS, J., <i>vs.</i> D. WYATT AIKEN, contested election, third district of South Carolina..... | 603 |
| STOLBRAND <i>vs.</i> AIKEN, report of committee..... | 603 |
| resolutions adopted..... | 604 |
| STOVALL, JOHN T., <i>vs.</i> GEORGE C. CABELL, contested election, fifth district of Virginia | 667 |
| STOVALL <i>vs.</i> CABELL, report of committee..... | 667 |
| resolutions adopted..... | 675 |
| STROBACH, PAUL, <i>vs.</i> HILARY A. HERBERT, contested election, second district of Alabama..... | 5 |
| STROBACH <i>vs.</i> HERBERT, report of committee..... | 5 |
| resolution adopted | 7 |

T.

| | |
|--|-----|
| Thompson, Hon. W. G., Iowa, member of Committee on Elections..... | 3 |
| Tillman, George D., contestee, fifth district of South Carolina..... | 430 |

U.

| | Page. |
|--|-------|
| Utah— CANNON vs. CAMPBELL | 604 |

V.

| | |
|---|-----|
| Virginia— BAYLEY vs. BARBOUR | 676 |
| STOVALL vs. CABELL | 667 |

W.

| | |
|---|-----|
| Wait, Hon. John T., Connecticut, member of Committee on Elections | 3 |
| Wheeler, Joseph, contestee, eighth district of Alabama | 61 |
| WITHERSPOON, G. W., vs. R. M. H. DAVIDSON, contested election, first district of Florida | 163 |
| WITHERSPOON vs DAVIDSON, report of committee | 163 |

O







10





